

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

**CALIFORNIA STATE LANDS
COMMISSION**

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, Executive Officer

916.574.1800

TTY CA Relay Service: **711** or Phone **800.735.2922**
from Voice Phone **800.735.2929**
or for Spanish **800.855.3000**

Contact Phone: 916.574.1900

August 10, 2023

File ref: Lease 6616

Sent via postal and E-Mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

SUBJECT: Required Application for an Amendment of Lease PRC 6616, a General Lease – Public Agency Use for the Operation and Maintenance of Huntington Beach Pier

Dear Mr. Gates:

Our records indicate that that the City has permitted an operator for an event known as the Huntington Beach Pacific Airshow that will occur in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity constitutes an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City of Huntington Beach (City) for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff has become aware that a proposed event, the Huntington Beach Pacific Airshow, will utilize the Pier.

Based on the information available, the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights

City of Huntington Beach

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between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier will be closed to the general public on all three days of the event and that the event operator will only allow access to the Pier through the purchase of a ticket sold by a private vendor. The event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating will also be restricted, during the event is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

"Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization through the form of an amendment to the lease. An application for a lease amendment is urgently required for the proposed event.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- Photos or diagrams showing where the closure of the pier begins.

City of Huntington Beach

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We request your cooperation in this matter and urge the City to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

D4AAC71802234D2

Seth Blackmon

Chief Counsel, Legal Division

cc: Al Zelinka, City Manager, City of Huntington Beach
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division

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February 20, 2024

File ref: Lease 6616

Sent via postal and E-Mail (Eric.Parra@surfcity-hb.org)

Mr. Eric G. Parra
Interim City Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

Mr. Kevin Elliott
Chief Executive Officer
Code Four
5252 Bolsa Ave
Huntington Beach, CA 92649

SUBJECT: Required Application for Commission Authorization for the Operation and Maintenance of Huntington Beach Pier and Pacific Ocean AND Conditions to Protect the Bolsa Chica Ecological Reserve

Dear Mr. Parra and Mr. Elliott:

In 2023, the State Lands Commission (Commission) sent two letters to the city of Huntington Beach (City) and the event operator, Code Four prior to last year's Huntington Beach Pacific Airshow expressing concerns which were subsequently not addressed by either the City or Code Four. The letters are attached. These issues remain unresolved, and the Commission requests coordination with the City and Code Four to reach a mutually satisfactory resolution on these matters and to achieve a satisfactory approach for the conduct of future Pacific Airshows. Commission staff is aware of the Notice of Preparation/Initial Study the City has issued for an Environmental Impact Report

for the Airshow, and staff will send a separate CEQA comment letter as part of the CEQA process.

Required Application for Commission Authorization for the Operation and Maintenance of Huntington Beach Pier and Sovereign Land in the Pacific Ocean:

In 2023, the City permitted Code Four for an event known as the Huntington Beach Pacific Airshow that occurred in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the activity constituted an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018.

Based on the information available, the 2023 event occurred for three days, from September 29th through October 1st, with airshow flights between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier was closed to the general public on all three days of the event and that the event operator allowed access to the Pier through the purchase of a ticket sold by a private vendor. While staff were informed by the City that public access to the pier would still be available during the event, photographs of the pier during the event do not indicate that public access was provided. In addition, the event required the temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a “sterile aerobatic box” area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating was also restricted during the event, is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

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waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization. An application for Commission authorization is urgently required to avoid continued violations of the lease and unauthorized use for future proposed events.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. Please note that applications can take a minimum of six months to process and schedule for consideration. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- An Approximate Expense Deposit for application review and processing.
- Photos or diagrams showing where the closure of the pier begins.

Required Application for Lease from Event Operator, Code Four:

Airshow activities described above, including those occurring on and over the water (e.g., placement of buoys, etc.) and on the portions of the Pier that stand on land waterward of the ordinary high-water mark, also require Code Four to obtain Commission authorization.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. Please note that applications can take a minimum of six months to process and schedule for consideration. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.
- Specific location information on placement of marker buoys.
- Specific location information on placement of temporary airstrips/helipads and any other potential encroachments and activities waterward of, or adjacent to the ordinary high-water mark.
- An Approximate Expense Deposit for application review and processing.

If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures (including but not limited to buoys) may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

Conditions to Protect the Bolsa Chica Ecological Reserve:

The Commission owns approximately 1200 acres of sovereign lands in the Bolsa Chica Ecological Reserve (BCER). The Commission leases these lands to the California Department of Fish and Wildlife (CDFW) for on-site management. Additionally, the Commission, along with five other state and federal agencies informally referred to as the Bolsa Chica Steering Committee, provides overall management oversight of BCER.

Portions of the BCER contain active oil operations, including operating wells and pipelines maintained by California Resources Corporation. An aircraft accident in this area could create legal liability for the parties responsible, in addition to potentially causing ecological and human health and safety damage.

CDFW is responsible for the daily on-site management of the BCER, which provides habitat for a rich diversity of fish, wildlife, and plant species, including many listed and special status species. The department is also responsible for regulatory enforcement and management of related recreational, commercial, scientific, and educational uses.

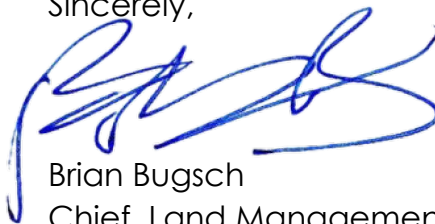
During the 2023 airshow, repeated low flyovers by the airshow jets caused disruptions in the normal behavior patterns of many bird species, including

feeding and sheltering at BCER. These repeated low flyovers harassed the bird populations and caused them to take flight each time the airplanes flew over. This action is considered a "take" and is in violation of California Code of Regulations, title 14, section 251.1. Additionally, under sections 550, 630 (18), and 632 (121), (122) of title 14, no aircraft operations are permitted in a reserve, and low flyovers are in violation. The sound pollution and overhead flights pose a threat to birds and other wildlife. The BCER is a critical stopover along the Pacific Flyway for hundreds of migratory bird species which are protected under the Migratory Bird Treaty Act of 1918 (MBTA, 16.U.S.C §§ 703-712). These also include threatened and endangered species which are protected under the Federal Endangered Species Act of 1973 (16 U.S.C §§ 1531-1544), and the California Endangered Species Act of 1970 (Fish & G. Code, Ch. 1.5, §§ 2050-2115.5). A few that depend heavily on the BCER include the Western snowy plover, Light-footed Ridgway's rail, Coastal California gnatcatcher, and the Belding's savannah sparrow.

We request your cooperation and compliance in these matters and urge the City to contact the Commission to:

- 1) As described above, submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.
- 2) Impose conditions on approvals for the 2024 Airshow and future events which disallow any flights directly over the BCER. If you have any questions, please contact Wendy Hall at (916)-574-0994 or wendy.hall@slc.ca.gov.

Sincerely,



Brian Bugsch
Chief, Land Management Division

cc: see next page

cc: Michael Gates, City Attorney, City of Huntington Beach
Seth Blackmon, CLSC Legal Division
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division
Wendy Hall, CSLC Executive Division

Attachments

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August 10, 2023

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Sent via postal and E-Mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

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City of Huntington Beach

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DocuSigned by:

D4AAC71802234D2

Seth Blackmon

Chief Counsel, Legal Division

cc: Al Zelinka, City Manager, City of Huntington Beach
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division

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Contact Phone: 916.574.1900

August 10, 2023

Sent via postal and E-Mail (info@pacificairshow.com)

Pacific Airshow, LLC
5252 Bolsa Avenue
Huntington Beach, CA 92649

SUBJECT: State Lands Lease Required for the Proposed Pacific Airshow in the Pacific Ocean, Huntington Beach, Orange County

Dear Pacific Airshow, LLC:

Our records indicate that you are the planned operator of the Huntington Beach Pacific Airshow that will occur in and along the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity will occupy State land under the jurisdiction of the California State Lands Commission (Commission).

As general background, the Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code §§ 6009, 6009.1, 6301, and 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit

Pacific Airshow, LLC

Page 2

of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections

Additionally, please be advised that the Pacific Ocean is subject to the Public Right of Navigation. This right provides that the public may navigate and exercise the incidents of navigation in a lawful manner. Such uses may include, but are not limited to, boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study (*People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040). Events and activities are not allowed to restrict or impede the navigation and recreational rights of the public except under limited circumstances, and only with the advance approval and authorization of the Commission.

Based on the information available, staff understands that the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Huntington Beach Pier will be closed to the public on all three days of the event. There will also be restricted public recreational access along the beach and in the ocean during the event, and boating in the area will be restricted. Moreover, the event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. You are therefore required to obtain a lease from the Commission for the use of State land.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.

Pacific Airshow, LLC

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If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

We request your cooperation in this matter and urge you to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

Seth Blackmon

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Seth Blackmon

Chief Counsel, Legal Division

cc: Warren Crunk, Legal Division
Lucinda Calvo, Legal Division
Ken Foster, Land Management Division
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March 4, 2024

SCH # 2024020006

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648
connor.hyland@surfcity-hb.org

**Subject: Amendment to comment letter for the Pacific Airshow (SCH 2024020006)
from California State Lands Commission to the City of Huntington Beach**

Dear Connor Hyland,

California State Lands Commission staff submit the attached letter as part of the agency's comments on the Notice of Preparation for a Draft Environmental Impact Report for the Pacific Airshow Huntington Beach Project. Please consider the attached letter along with the previously-submitted letter and other associated attachments.

Sincerely,

A handwritten signature in black ink that reads "Nicole Dobroski". The signature is written in a cursive, flowing style.

Nicole Dobroski, Chief
Division of Environmental Science, Planning, and
Management

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As general background, the Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code §§ 6009, 6009.1, 6301, and 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit

Pacific Airshow, LLC

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of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections

Additionally, please be advised that the Pacific Ocean is subject to the Public Right of Navigation. This right provides that the public may navigate and exercise the incidents of navigation in a lawful manner. Such uses may include, but are not limited to, boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study (*People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040). Events and activities are not allowed to restrict or impede the navigation and recreational rights of the public except under limited circumstances, and only with the advance approval and authorization of the Commission.

Based on the information available, staff understands that the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Huntington Beach Pier will be closed to the public on all three days of the event. There will also be restricted public recreational access along the beach and in the ocean during the event, and boating in the area will be restricted. Moreover, the event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. You are therefore required to obtain a lease from the Commission for the use of State land.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.

Pacific Airshow, LLC

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If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

We request your cooperation in this matter and urge you to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

Seth Blackmon

D4AAC71802234D2...
Seth Blackmon

Chief Counsel, Legal Division

cc: Warren Crunk, Legal Division
Lucinda Calvo, Legal Division
Ken Foster, Land Management Division
Kelly Connor, Land Management Division

**CALIFORNIA STATE LANDS
COMMISSION**

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March 4, 2024

File Ref: SCH # 2024020006

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648
connor.hyland@surfcity-hb.org

**Subject: Notice of Preparation for a Draft Environmental Impact Report for the
Pacific Airshow Huntington Beach Project, Orange County**

Dear Connor Hyland,

The California State Lands Commission (Commission) staff has reviewed the Notice of Preparation (NOP) for a Draft Environmental Impact Report (DEIR) for the Pacific Airshow Huntington Beach (Project or Airshow), which is being prepared by the City of Huntington Beach (City). The City, as the public agency that must issue a permit for the Project through their Specific Event Permit Process, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Pacific Airshow LLC is applying for the permit and is proposing to carry out the Project. The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their accompanying Public Trust resources or uses. Additionally, because the Project involves work on State sovereign land, the Commission will act as a responsible agency. Commission staff requests that the City consult with us on preparation of the DEIR as required by CEQA section 21153, subdivision (a) and the State CEQA Guidelines section 15086, subdivisions (a)(1) and (a)(2).

Staff contacted the City and event operator by letter in August 2023 (see attached 2023 letter) regarding the requirement for a Commission lease or lease amendment for the use of sovereign lands for the 2023 Airshow, as well as concerns regarding Airshow impacts on the Bolsa Chica Ecological Reserve

(BCER), which is owned and managed by the Commission. In February 2024, staff again sent letters to the City and event operator (see attached 2024 letter). As previously stated by letter to the City, staff requested coordination with the City and operator to reach a mutually satisfactory resolution on these matters and to achieve a satisfactory approach for the conduct of future Pacific Airshows. As part of the Commission's effort to work with the City, staff offers these comments on the NOP and Initial Study (IS).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

After review of the information contained in the NOP, there are several components of the Project that would require Commission authorization. The Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City for the operation and maintenance of an existing municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff is aware that the proposed Project will utilize the Pier. The City's lease acknowledges that the Lease Premises, including the Pier, are subject to the Public Trust and are available to members of the public. If the City proposes to close a portion of the pier within the Lease Premises to the general public, the City must obtain

Commission authorization through the form of an amendment to the existing lease or issuance of a new lease.

Another component of the proposed Project includes the placement of 16 large white buoys along a 12,000-foot line to be located 500 and 1,500 feet offshore, marking the Airshow Performance Area. This area would restrict public access and water-dependent recreation, including boating, during the event; such a restriction is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission. The placement of the buoys would constitute an additional encroachment on these sovereign lands, and in the absence of Commission authorization would constitute a trespass subject to the Commission's enforcement authority (Pub. Resources Code, §§ 6216.1, 6224.3 et seq., 6301, 6303.1; 2 CCR § 3002). Therefore, the placement of the buoys in the ocean will require Commission authorization.

The proposed Project also includes a helicopter landing/runway display on a temporary helipad to be generally located within an open area directly in front of the Main Hospitality Area during the hours of the airshow. However, based on the current Project information, the proposed runway may encroach waterward of the ordinary high-water mark and within sovereign land subject to the Commission's leasing jurisdiction. In addition, construction activities associated with the proposed runway may temporarily encroach on sovereign land and require Commission authorization. Please provide staff with more detailed Project plans that show the specific proposed location of the landing/runway.

Therefore, the proposed Project will require an application for an amendment of the existing lease or a new lease. Information on the Commission's leasing process can be found online at www.slc.ca.gov/leases-permits/, the online application can be found at www.oscar.slc.ca.gov/, and any related questions can be directed to Mr. Kelly Connor (contact information below).

In addition, the Commission owns approximately 1,200 acres of sovereign lands in the BCER located within the Project's Temporary Flight Restriction (TFR) Area. The Commission leases these lands to the California Department of Fish and Wildlife (CDFW) for on-site management. Additionally, the Commission, along with five other state and federal agencies informally referred to as the Bolsa Chica Steering Committee, provides overall management oversight of the BCER.

Project Description

Pacific Airshow LLC proposes the Pacific Airshow Huntington Beach Project to meet the following objectives and needs:

- Provide a spectacle-scale airshow in Huntington Beach that attracts attendees throughout the Southern California area and beyond.
- Feature civilian and military aircraft flybys and aerial acrobatics, air racing; and helicopter, electric vehicle, drone, and emerging aviation/mobility technology displays.
- Provide visitor-serving entertainment, services, and amenities.
- Provide an event that reduces potential impacts to the surrounding sensitive habitat including the Bolsa Chica Ecological Reserve, the Huntington Beach Wetlands, the Magnolia Marsh, and special-status wildlife species such as the federally endangered California least tern and western snowy plover.

From the Project Description, Commission staff understands that the Project would include the following components that have potential to impact State sovereign land and Public Trust resources:

- Practice flyovers and flight paths: Practice flyover events are proposed to begin the Monday before the start date of the Pacific Airshow event.
- Airshow event activities: Aerial event activities are proposed to take place over a 3 to 5-day period. Event activities include daytime and nighttime events which start at 10:30 AM and nighttime flyovers and/or parachute jumps planned to take place during the evening hours.
- Beach Airstrip: The IS states that a helicopter landing/runway display activity (pg. 2-8) will be held on a temporary airstrip built out on the beach in front of the Main Hospitality Area (pg. 2-11).
- Pyrotechnic nightly shows: A nighttime proposed activity (pg. 2-8) that may be discharged from flyover aircraft, the Huntington Beach Pier, or an ocean barge.
- Event amenities: Event amenities, such as food trucks, wave pool, demonstrations, competitions, drones, and additional events.
- Trash containment and removal: Containment and removal of trash during the event and following the breakdown of the event.
- Single-use plastics: Event vendors providing services and amenities during the event will be strongly encouraged to not use plastic by the Project Sponsor (pg. 2-14).

Environmental Review

Commission staff requests that the City consider the following comments when preparing the DEIR to ensure that impacts to State sovereign land and Public Trust resources are adequately analyzed.

General Comments

1. Project Description: The Project description (PD) provided in the IS discusses former airshow events as well as future proposed airshow events that would include an expansion of the event from 3 to up to 5 days, with later event stop times (10 PM to 11 PM), and would include many additional proposed activities (e.g., pyrotechnic shows, nighttime music festival). The IS states that the performers and types of aerial activities are likely to change each year (pg. 2-10). The Project description for future airshow events is currently broad and lacks pertinent details for evaluating environmental impacts from all the proposed Project activities. All proposed activities and their environmental impacts must be evaluated in the DEIR. In addition, the DEIR must identify and describe the most impactful combination of activities that could possibly occur (the "worst-case scenario") and carry forward the full environmental impact analysis for that scenario.

A thorough and complete PD should be included in the DEIR to facilitate meaningful environmental review of potential impacts, mitigation measures, and alternatives. The PD should be as precise as possible in describing the details of all allowable activities that originate within or outside the IS's identified Project area (e.g., flight paths from origin airports for practice and event airshow activities, types of aircraft, maximum area of impact, locations of activities within the Project area, etc.), as well as the details of the timing and length of activities. Thorough descriptions will facilitate Commission staff's determination of the extent and locations of its leasing jurisdiction, make for a more robust analysis of the work and activities that may be performed, and minimize the potential for subsequent environmental analysis to be required.

2. Project Description – Project Area: The IS states on pg. 2-1 that "The Show Center Area and Airshow Performance Area collectively comprise of the Project Site." However, many Project-related activities (e.g., Project-related flights) also occur within the Project's "temporary flight restriction (TFR) airspace" defined on pg. 2-1 as the "five nautical mile (NM) ring centered on the center of the Airshow's aerobatic box." For purposes of the DEIR, the definition of the Project Site should be expanded to encompass the TFR area. At a minimum, the DEIR should clearly identify a Project Study Area to include the Show Center Area, the Airshow Performance Area, and the 5 nautical mile TFR ring and fully describe and analyze all Project activities and impacts within. Staff encourages the City to work with Pacific Airshow LLC to incorporate Project design changes in the DEIR to avoid sensitive areas like the BCER and that include minimum flight altitude restrictions.

In addition, the IS does not include the locations of the various event amenities within the Project area. Staff recommends having specific locations for these event amenities described in the DEIR.

3. CEQA Document: If the City is unable to identify a worst-case scenario for Project-level EIR analysis (see comment #1, above), then staff suggests that the City consider using a programmatic environmental impact report (PEIR). A PEIR may be more appropriate than a Project EIR to provide for flexibility in evaluating various activities or components during the projected 10-year timeline for the Pacific Airshow. In addition, a PEIR may allow for future CEQA documents and subsequent environmental impact analyses to evaluate any event activities that are not currently identified.
4. Required Approvals: Staff notes that the IS omits the Commission from the list of public agencies with approval authority over the Project. In the DEIR's Review and Approvals section, please include: 1) the Commission's Responsible agency review of the Final EIR and adoption of an independent Mitigation Monitoring Program, and 2) Approval of a State Lands Lease(s) and/or Lease Amendment. In the DEIR's list of public agencies whose approval is required, please include the Commission as a CEQA Responsible Agency.
5. Helipad/Temporary airstrip: The DEIR should expand upon the IS's description of the helicopter landing/runway display (IS pgs. 2-5, 2-8, 2-10, and 2-11) and clarify that the airstrip may be used for planes as well as helicopters. A recent February 15, 2024, media event promoting the Project featured Airshow operator Kevin Elliott and the City's Mayor each arriving at the beach on small planes. Local media covering the event reported, "For this year's air show, event organizers will construct a temporary runway on the beach where planes will land and take off right in front of spectators."¹ In addition, the IS states on pg. 2-8 that the temporary helipad will be constructed in front of the Main Hospitality Area to provide a landing/runway area for aerial performances. The DEIR should provide a robust description of the construction of this runway or airstrip and include the estimated depth of excavation, as repeated references to this project component in the IS describe construction activities as simply "at or near-grade on the sand" (pg. 3-19).

Biological Resources

6. Bolsa Chica Ecological Reserve and Special Status Species: BCER is home to over twenty-two special status species and is designated by the U.S. Environmental Protection Agency as a critical flyway for migratory birds. Pg. 2-6 of the IS states that "Preliminary Project objectives include" providing "an event that reduces potential impacts to the surrounding sensitive habitat

¹ Orange County Register, "[Huntington Beach air show will land planes on the beach for this year's event](https://www.ocregister.com/2024/02/15/huntington-beach-air-show-will-land-planes-on-the-beach-for-this-years-event/)" (Feb. 15, 2024) (<https://www.ocregister.com/2024/02/15/huntington-beach-air-show-will-land-planes-on-the-beach-for-this-years-event/>).

including the Bolsa Chica Ecological Reserve, the Huntington Beach Wetlands, the Magnolia Marsh, and special-status wildlife species such as the federally endangered California least tern and western snowy plover."

However, to accomplish this objective, the DEIR must analyze the Project's potential impacts on these sensitive habitats and formulate enforceable mitigation measures to address the CDFW on-site management team's documented impacts on BCER that have occurred during past Airshows as stated in the August 25, 2023, joint letter from the Commission and CDFW, to the City and airshow operator, Code Four (see attached 2023 letter). While pg. 2-10 of the IS states that "many of the aircraft...seldom fly over land...", this statement conflicts with multiple observations over multiple years, as referenced in the letters sent by Commission on August 25, 2023, and February 20, 2024, to the City and the airshow operator. These letters document incidents during the 2021, 2022, and 2023 airshows of repeated low flyovers by the airshow jets that caused disruptions in the normal behavior patterns of many bird species, including feeding and sheltering, at BCER. These repeated low flyovers harassed the bird populations and caused them to take flight each time the airplanes flew over. This action is considered a "take" and is in violation of California Code of Regulations, title 14, section 251.1 and U.S. Fish and Wildlife regulations 50 CFR 17.3. Additionally, under sections 550, 630 (18), and 632 (121), (122) of title 14, no aircraft operations are permitted in a reserve, and low flyovers are in violation. The sound pollution and overhead flights pose a threat to birds and other wildlife. The BCER is a critical stopover along the Pacific Flyway for hundreds of migratory bird species which are protected under the Migratory Bird Treaty Act of 1918 (MBTA, 16.U.S.C §§ 703-712) and include threatened and endangered species which are protected under the Federal Endangered Species Act of 1973 (16 U.S.C §§ 1531-1544), and the California Endangered Species Act of 1970 (Fish & G. Code, Ch. 1.5, §§ 2050-2115.5).

The DEIR should include an evaluation of noise and vibration impacts on fish, birds, and other wildlife from the event's operations activities (practice flyovers and aerial events, pyrotechnic shows, amplified sound, etc.) within the Project radius (5-mile TFR radius centered on the airshow performance area, IS Figure 3), which includes BCER. To support the DEIR's noise and vibrations analyses and environmental impact significance determinations, staff expects the document to also include representative flight paths for practice flyover and aerial event performances.

7. Existing and Regulatory Settings: For all land under the Commission's jurisdiction, the DEIR must disclose and analyze all potentially significant effects on sensitive species and habitats in and around the Project Site, including special status wildlife, fish, and plants, and if appropriate, identify

feasible mitigation measures to reduce those impacts. The City should conduct queries of the CDFW's California Natural Diversity Database and U.S. Fish and Wildlife Service's (USFWS) Special Status Species Database to identify any special status plant or wildlife species that may occur in the Project area. The DEIR should also include a discussion of early consultation with the CDFW, USFWS, and National Marine Fisheries Service (NMFS), as applicable, and identify any potentially required permits identified by these agencies.

Additionally, the DEIR's regulatory setting for Biological Resources should include discussion of CDFW regulations prohibiting the use of any "aircraft, hovercraft, or hot air balloon" in Ecological Reserves and other CDFW sites without first obtaining a CDFW Special Use Permit ([Cal. Code Regs., tit. 14, § 550 \(aa\)](#)). The regulatory setting should also include other relevant laws and regulations pertaining to aircraft restrictions in CDFW sites.²

8. Drones: The IS states that drone and similar small aircraft technology will be flown as part of the Project, including on pg. 2-8 ("Aircraft static, EV, drone and other urban air mobility (UAM) technology displays and aerial competitions to occur") and pg. 2-9 ("The Applicant would conduct scheduled drone flights throughout the event days for capture of event promotional footage and documentation of event layouts in various areas"). The DEIR should include analysis of potential impacts should drones and similar technology stray into the BCER and include mitigation measures to avoid such impacts. Mitigation could include, but not be limited to, requiring Airshow UAM operators to utilize the FAA's B4UFLy app. See [CDFW Wildlife Areas and Ecological Reserves Added to FAA's Drone Mobile App](#) (<https://wildlife.ca.gov/News/Archive/cdfw-wildlife-areas-and-ecological-reserves-added-to-faas-drone-mobile-app#gsc.tab=0>). A recent example of drone impacts occurred on May 12, 2021, when an illegally operated drone crashed in the BCER, resulting in approximately 3,000 Elegant Terns leaving their nesting grounds and abandoning an estimated 2,000 eggs,³ resulting in a massive reproductive loss for the species, which has only four known nesting sites left on earth.⁴
9. Trash/Trash Removal: The DEIR should include best management practices and mitigation measures to ensure trash, including streamer drops from the Pacific Airshow's opening ceremonies, will be properly contained for the

² Including but not limited to section 3503 of the Fish and Game Code and California Code of Regulations, title 14, sections 251, 251.1.

³ See CDFW webpage, [Legal and Responsible Drone Operations: Wildlife Disturbance](#) (<https://wildlife.ca.gov/Drones>).

⁴ National Public Radio, "[A Single Drone Has Harmed A Generation Of Wildlife](#)" (June 22, 2021) (<https://www.npr.org/2021/06/22/1008986922/a-single-drone-has-harmed-a-generation-of-wildlife>).

duration of the event and not overflow to the surrounding beach, water, and greater coastal area, including BCER. Trash can present environmental hazards to species through exposure or ingestion and lead to degradation of habitat. Staff also strongly encourages the Project sponsor to not only “strongly encourage,” but require event vendors to avoid single-use plastics (i.e., carry-out bags, cutlery), to the extent feasible, as they are a danger to wildlife (e.g., ingestion, entanglements, etc.).

Air Quality

10. Criteria Pollutants: The IS identified a potentially significant impact to air quality, during the Pacific Airshow’s operations phase, from a net increase of criteria pollutants. However, the IS also determined that “There would be no potential for construction or construction-related ground disturbance generating net new emissions or net new increase in short-term construction employment.” (p.3-10) and “There would be no potential for construction or construction-related ground disturbance generating a considerable net increase in emissions of ozone precursors (VOC and NOX), PM10, and PM2.5. / No further analysis of this issue in the EIR is required.” (p. 3-11) The IS also notes that the Project would include constructing a temporary airstrip on the beach in front of the Main Hospitality Area. Commission staff expects the City to include in the DEIR emissions modeling results for both construction- and operations-related criteria pollutant emissions as well as the associated impact analyses and feasible mitigation measures.
11. Air Quality Management Plan – existing non-attainment: The IS identified a less than significant impact when evaluating conflicts with or obstructions to the South Coast Air Quality District’s (District) Air Quality Management Plan (AQMP). The District provides criteria to evaluate a Project’s consistency, which includes “Criterion 1: Will the project result in any of the following: – An increase in the frequency or severity of existing air quality violations...” (p. 3-9). For those criteria pollutants where the region is already in non-attainment, the IS does not adequately discuss why a Project that creates a potentially significant impact by increasing the emission of criteria pollutants (pg. 3-11) does not also create an increase in the frequency and/or severity of the existing non-attainment violations. In addition, the IS artificially and improperly restricts new emissions to those occurring from “on-site” activities (“The competitions and art installations would not result in new emissions from on-site activities. The temporary event structures would also be similar in scale and location to previous Airshows since 2016 (except in 2020) and would not result in new emissions from on-site activities.”)(*Id.*) By extending the airshow festival length and adding potential activities, the proposed Project does contemplate an increase in criteria pollutant emissions over any potential

CEQA baseline. The extended airshow festival will result in increased aircraft emissions that should be carried forward and analyzed in the DEIR.

Please also consider including emissions evaluations from idling cars sitting in traffic that could contribute to air quality impacts. The DEIR should thoroughly describe the impact of the Project on air quality and the efforts to avoid, minimize, and mitigate those impacts. Staff recommends the inclusion of traffic mitigations to help reduce further impacts to air quality.

Recreation

12. Public Access: The IS states on pg. 2-10 that "Access to the pier ocean ward [sic] of the seating area shall remain open to the public" and on pg. 2-12, "Public access (for non-ticket holders) to the Pier would remain open during future Airshows. Only a portion of the Pier would be reserved for seated ticketholders and pier ingress and egress would still be provided." Regarding coastline access, the IS states at pg. 3-41 that "vertical and horizontal access to the coastline would be maintained throughout the duration of the event." While the IS evaluates physical deterioration related to beach activity and beach use (pg. 3-50), the Recreation discussion does not include potential impacts to public use of and recreational opportunities on the beach or pier. As the City is not restricted to those questions suggested within the CEQA Guidelines, Appendix G checklist, please include the following impact question as part of the DEIR's recreation analysis: "Would the project interfere with existing public use of and recreational opportunities related to the pier and beach?" As part of the analysis, the document should detail, both in text and in diagrams and/or pictures, how public access to the pier and beach will be maintained. Staff recommends that the City consider incorporating public access monitors as potential mitigation to ensure that Project activities do not inhibit or discourage access to public beaches and the Huntington Beach Pier.

Hazardous Materials

13. Hazards and Hazardous Materials: Although the IS determined that there were no potentially significant impacts from reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment (pg. 3-32), the Project has a potential significant impact related to Hazards and Hazardous Materials that should be further evaluated in the DEIR. For example, despite the statement on pg. 2-5 that no oil drilling or oil extraction occurs "within the nearby vicinity," numerous onshore oil wells and related pipelines are nearby, in addition to wells in and adjacent to the BCER. In fact, as the IS notes (pg. 2-5), the 2021 airshow was cut short by an oil spill originating from an offshore oil pipeline. While that particular incident represented an impact on the Airshow from existing activities, the converse is

also reasonably foreseeable, as the Project has the potential to exacerbate existing environmental risks due to the performance of high-risk aerobatic flights over active oil fields, including those in the BCER (*California Bldg. Indus. Ass'n v Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 377, 388-389.). Such overflights have occurred repeatedly in past years' airshows, despite the statement in the IS that airshow aircraft "seldom fly over land" (pg. 2-10). Thus, the reasonably foreseeable potential significant impact of an aircraft accident triggering an oil or hazardous material spill should be analyzed in the DEIR, along with avoidance strategies (for example, by avoiding overflights of BCER) and/or mitigation measures.

The IS states at pg. 2-9 that streamer drops are anticipated as part of the opening ceremony on each day of the Airshow. The DEIR should describe and analyze the potentially significant impact that could occur should streamers land on power lines in the BCER and start a fire. During the 2022 Airshow, streamer drops resulted in streamers landing in the BCER near powerlines, leading the BCER CDFW on-site manager to contact Commission staff with concerns about the risk of fire in the active oil field within the BCER. Please see the previous paragraph as well as comment #1, *Project Description*, for suggestions on Project design changes and requests for mitigation measures.

Tribal Cultural Resources

14. Consideration of Tribal Cultural Resources: The IS identifies potentially significant impacts to Tribal Cultural Resources (pg. 3-54) but reports that the Project activities would not result in any permanent structures and that no excavations, grading, or trenching would be associated with the construction phase. The inclusion of a beach airstrip in the Project area challenges this conclusion. AB 52 includes both procedural *and* substantive requirements, including the requirement that lead agencies strive to avoid significant adverse changes to tribal cultural resources, regardless of whether consultation is requested or occurs, and incorporate mitigation measures recommended by tribes unless the lead agency determines those suggestions are not feasible. Please note that it is the Commission's broader policy to go beyond the requirements of AB 52 by conducting outreach and consultation with all tribes culturally affiliated with a Project area, as determined by the Native American Heritage Commission, for a proposed Project that may have significant effects on tribal cultural resources. The Commission strongly encourages early, frequent, and meaningful engagement with all culturally affiliated tribes that may be affected by this Project.

Alternatives

15. Alternatives: Staff recommends the inclusion of a no-Project alternative to provide a baseline for establishing environmental conditions in the Project area. Additionally, if the PD is not revised to specify no overflights will occur over the BCER, then staff recommends the City identify and analyze an alternative which excludes flight paths over the BCER, to potentially reduce the level of impacts to State and Federally protected species. In addition to describing mitigation measures that would avoid or reduce the potentially significant impacts of the Project, the City should identify and analyze a range of reasonable alternatives to the proposed Project that would attain most of the Project objectives while avoiding or reducing one or more of the potentially significant impacts (see State CEQA Guidelines, § 15126.6).

Environmental Justice

16. Environmental Justice: Environmental Justice is defined by California law as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code § 65040.12) This definition is consistent with the Public Trust Doctrine’s principle that management of trust lands is for the benefit of all people. The Commission adopted an updated [Environmental Justice Policy and Implementation Blueprint](#) in December 2018 to ensure that environmental justice is an essential consideration in the agency’s processes, decisions, and programs. The twelve goals outlined in the Policy reflect an urgent need to address the inequities of the past, so they do not continue. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations.

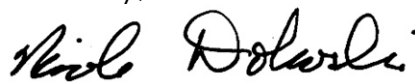
Although not legally required in a CEQA document, Commission staff suggests that the City include a section describing the environmental justice community outreach and engagement undertaken in developing the DEIR and the results of such outreach. The California Office of Environmental Health Hazard Assessment developed the [CalEnviroScreen](#) mapping tool to assist agencies with locating census tracts near proposed Projects and identifying the environmental burdens, should there be any, that disproportionately impact those communities. Environmental justice communities often lack access to the decision-making process and experience barriers to becoming involved in that process. It is crucial that these communities are consulted as early as possible in the Project planning process. Commission staff strongly recommends using the [CalEnviroScreen](#)

tool and then, as applicable, reaching out through local community-based organizations, such as [Communities for a Better Environment](#) and [Orange County Environmental Justice](#). Engaging in early outreach will facilitate more equitable access for all community members. In this manner, the CEQA public comment process can improve and provide an opportunity for more members of the public to provide input related to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures. Furthermore, a key goal in the Commission's Environmental Justice Policy and Implementation Blueprint is increasing and supporting equitable public access, as discussed in comment #12, above. Commission staff recommends the City consider environmental justice communities in their analysis. Commission staff will review the environmental justice outreach and associated results as part of any future Commission action.

Thank you for the opportunity to comment on the NOP for the Project. As a trustee and responsible agency, Commission staff requests consultation on this Project and to be kept advised of changes to the Project Description and all other important developments. Please send additional information on the Project to the Commission staff listed below as the DEIR is being prepared.

Please refer questions concerning environmental review to Robin Tuohy, Environmental Scientist, at Robin.Tuohy@slc.ca.gov and Christine Day, Environmental Scientist, at Christine.Day@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Kelly Connor, Public Land Management Specialist III, at Kelly.Connor@slc.ca.gov. For questions related to the BCER, please contact Wendy Hall, Environmental Program Manager, at Wendy.Hall@slc.ca.gov.

Sincerely,



Nicole Dobroski
Chief Division of Environmental Science,
Planning, and Management

Attachments:

- 1) February 24, 2024, letter from Commission staff to City of Huntington Beach and Code Four
- 2) August 25, 2023, letter from Commission staff to City of Huntington Beach

cc: Office of Planning and Research
R. Tuohy, Commission

C. Day, Commission
K. Connor, Commission
W. Hall, Commission
L. Calvo, Commission
Y. Ramirez, Commission

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from Voice Phone **800.735.2929**
or for Spanish **800.855.3000**

Contact Phone: 916.574.1900

February 20, 2024

File ref: Lease 6616

Sent via postal and E-Mail (Eric.Parra@surfcity-hb.org)

Mr. Eric G. Parra
Interim City Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

Mr. Kevin Elliott
Chief Executive Officer
Code Four
5252 Bolsa Ave
Huntington Beach, CA 92649

SUBJECT: Required Application for Commission Authorization for the Operation and Maintenance of Huntington Beach Pier and Pacific Ocean AND Conditions to Protect the Bolsa Chica Ecological Reserve

Dear Mr. Parra and Mr. Elliott:

In 2023, the State Lands Commission (Commission) sent two letters to the city of Huntington Beach (City) and the event operator, Code Four prior to last year's Huntington Beach Pacific Airshow expressing concerns which were subsequently not addressed by either the City or Code Four. The letters are attached. These issues remain unresolved, and the Commission requests coordination with the City and Code Four to reach a mutually satisfactory resolution on these matters and to achieve a satisfactory approach for the conduct of future Pacific Airshows. Commission staff is aware of the Notice of Preparation/Initial Study the City has issued for an Environmental Impact Report

for the Airshow, and staff will send a separate CEQA comment letter as part of the CEQA process.

Required Application for Commission Authorization for the Operation and Maintenance of Huntington Beach Pier and Sovereign Land in the Pacific Ocean:

In 2023, the City permitted Code Four for an event known as the Huntington Beach Pacific Airshow that occurred in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the activity constituted an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018.

Based on the information available, the 2023 event occurred for three days, from September 29th through October 1st, with airshow flights between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier was closed to the general public on all three days of the event and that the event operator allowed access to the Pier through the purchase of a ticket sold by a private vendor. While staff were informed by the City that public access to the pier would still be available during the event, photographs of the pier during the event do not indicate that public access was provided. In addition, the event required the temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating was also restricted during the event, is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

"Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation,

waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization. An application for Commission authorization is urgently required to avoid continued violations of the lease and unauthorized use for future proposed events.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. Please note that applications can take a minimum of six months to process and schedule for consideration. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- An Approximate Expense Deposit for application review and processing.
- Photos or diagrams showing where the closure of the pier begins.

Required Application for Lease from Event Operator, Code Four:

Airshow activities described above, including those occurring on and over the water (e.g., placement of buoys, etc.) and on the portions of the Pier that stand on land waterward of the ordinary high-water mark, also require Code Four to obtain Commission authorization.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. Please note that applications can take a minimum of six months to process and schedule for consideration. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.
- Specific location information on placement of marker buoys.
- Specific location information on placement of temporary airstrips/helipads and any other potential encroachments and activities waterward of, or adjacent to the ordinary high-water mark.
- An Approximate Expense Deposit for application review and processing.

If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures (including but not limited to buoys) may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

Conditions to Protect the Bolsa Chica Ecological Reserve:

The Commission owns approximately 1200 acres of sovereign lands in the Bolsa Chica Ecological Reserve (BCER). The Commission leases these lands to the California Department of Fish and Wildlife (CDFW) for on-site management. Additionally, the Commission, along with five other state and federal agencies informally referred to as the Bolsa Chica Steering Committee, provides overall management oversight of BCER.

Portions of the BCER contain active oil operations, including operating wells and pipelines maintained by California Resources Corporation. An aircraft accident in this area could create legal liability for the parties responsible, in addition to potentially causing ecological and human health and safety damage.

CDFW is responsible for the daily on-site management of the BCER, which provides habitat for a rich diversity of fish, wildlife, and plant species, including many listed and special status species. The department is also responsible for regulatory enforcement and management of related recreational, commercial, scientific, and educational uses.

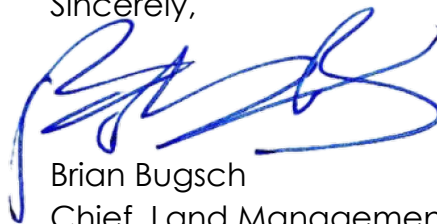
During the 2023 airshow, repeated low flyovers by the airshow jets caused disruptions in the normal behavior patterns of many bird species, including

feeding and sheltering at BCER. These repeated low flyovers harassed the bird populations and caused them to take flight each time the airplanes flew over. This action is considered a "take" and is in violation of California Code of Regulations, title 14, section 251.1. Additionally, under sections 550, 630 (18), and 632 (121), (122) of title 14, no aircraft operations are permitted in a reserve, and low flyovers are in violation. The sound pollution and overhead flights pose a threat to birds and other wildlife. The BCER is a critical stopover along the Pacific Flyway for hundreds of migratory bird species which are protected under the Migratory Bird Treaty Act of 1918 (MBTA, 16.U.S.C §§ 703-712). These also include threatened and endangered species which are protected under the Federal Endangered Species Act of 1973 (16 U.S.C §§ 1531-1544), and the California Endangered Species Act of 1970 (Fish & G. Code, Ch. 1.5, §§ 2050-2115.5). A few that depend heavily on the BCER include the Western snowy plover, Light-footed Ridgway's rail, Coastal California gnatcatcher, and the Belding's savannah sparrow.

We request your cooperation and compliance in these matters and urge the City to contact the Commission to:

- 1) As described above, submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.
- 2) Impose conditions on approvals for the 2024 Airshow and future events which disallow any flights directly over the BCER. If you have any questions, please contact Wendy Hall at (916)-574-0994 or wendy.hall@slc.ca.gov.

Sincerely,



Brian Bugsch
Chief, Land Management Division

cc: see next page

cc: Michael Gates, City Attorney, City of Huntington Beach
Seth Blackmon, CLSC Legal Division
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division
Wendy Hall, CSLC Executive Division

Attachments

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

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or for Spanish **800.855.3000**

Contact Phone: 916.574.1900

August 25, 2023

Sent via postal and E-mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California

Subject: Huntington Beach Airshow – conditions to protect the Bolsa Chica
Ecological Reserve

Dear Mr. Gates,

The California State Lands Commission (Commission) and California Department of Fish and Wildlife (CDFW) are jointly submitting this letter to address several concerns regarding the upcoming Huntington Beach Pacific Airshow scheduled for September 29th through October 1st, 2023.

As background, the Commission manages four million acres of sovereign tide and submerged lands, the beds of natural, navigable waterways including lakes and rivers, and school lands. The mission of the Commission is to provide the people of California with effective stewardship of the lands, waterways, and resources entrusted to its care through preservation, restoration, enhancement, responsible economic development, and the promotion of public access. This stewardship of sovereign lands and natural resources is guided by the common law Public Trust Doctrine, the California Constitution, various laws, and regulations specific to the Commission, and statutory trust grants.

The Commission owns approximately 1200 acres of sovereign lands in the Bolsa Chica Ecological Reserve (BCER). The Commission leases these lands to the CDFW for on-site management. Additionally, the Commission, along with five other state and federal agencies informally referred to as the Bolsa Chica Steering Committee, provides overall management oversight of BCER.

Portions of the BCER contain active oil operations, including operating wells and pipelines maintained by California Resources Corporation. An aircraft accident in this area could create legal liability for the parties responsible, in addition to potentially causing ecological and human health and safety damage.

CDFW manages California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. CDFW is responsible for the management of over 1.1 million acres of fish and wildlife habitat spanning over 700 properties statewide. These properties provide habitat for a rich diversity of fish, wildlife, and plant species and comprise habitats from every major ecosystem in the state. CDFW is responsible for regulatory enforcement and management of related recreational, commercial, scientific, and educational uses.

During the 2021 and 2022 airshow, several incidents occurred that caused disruptions in the normal behavior patterns of many bird species, including feeding and sheltering at Bolsa Chica Ecological Reserve. Disturbances included dropping streamers in the BCER, causing potential harm to wildlife and fire risk, and repeated low flyovers, which harassed the bird populations and caused them to take flight each time the airplanes flew over. This latter action is considered a "take" and is in violation of CCR T-14 251.1. Additionally, under Section 630 (17) of Title 14 "no aircraft operations are permitted in a reserve, and low flyovers are in violation". The sound pollution and overhead flights pose a threat to birds and other wildlife. The BCER is a critical stopover along the Pacific Flyway for hundreds of migratory bird species which are protected under the Migratory Bird Treaty Act of 1918 (MBTA, 16.U.S.C 703-712). These also include threatened and endangered species which are protected under the Federal Endangered Species Act of 1973 (16 U.S.C 1531-1544), and the California Endangered Species Act of 1970 (FGC, 1.5, 2050-2115.5). A few that depend heavily on the BCER include the Western snowy plover, Light-footed Ridgway's rail, Coastal California gnatcatcher, and the Belding's savannah sparrow.

In order to avoid a reoccurrence of these concerns this year for the 2023 airshow, we request compliance with the following conditions:

1. No flyovers will occur over BCER.
2. No streamers or any other debris will be dropped over the BCER.

Page **3** of **3**

We would be happy to meet with you to discuss these concerns and reach a mutual concurrence on a protocol for the event that accommodates the airshow, while protecting the natural resources of BCER.

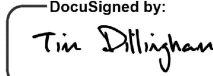
Please confirm receipt of this letter.

Sincerely,

DocuSigned by:

C23D6B9797F1445...

Wendy Hall
Environmental Program Manager
Special Projects Liaison
California State Lands Commission

DocuSigned by:

18197A48BF3B4B6...

Tim Dillingham
Environmental Program Manager
Lands and Wildlife, South Coast Region
California Department of Fish & Wildlife

cc:

Michael E. Gates, Attorney, City of Huntington Beach
Al Zelinka, Manager, City of Huntington Beach
Ashley Wysocki, Deputy Director, Community & Library Services, City of Huntington Beach
Kevin Elliott, CEO, Code Four, Airshow, LLC
Gregory McDonald, Long Beach Front Line Manager, Federal Aviation Administration
Lucinda Calvo, Attorney IV, CA State Lands Commission

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Contact Phone: 916.574.1900

March 4, 2024

SCH # 2024020006

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648
connor.hyland@surfcity-hb.org

**Subject: Amendment to comment letter for the Pacific Airshow (SCH 2024020006)
from California State Lands Commission to the City of Huntington Beach**

Dear Connor Hyland,

California State Lands Commission staff submit the attached letter as part of the agency's comments on the Notice of Preparation for a Draft Environmental Impact Report for the Pacific Airshow Huntington Beach Project. Please consider the attached letter along with the previously-submitted letter and other associated attachments.

Sincerely,

A handwritten signature in black ink that reads "Nicole Dobroski". The signature is fluid and cursive, with the first name "Nicole" and last name "Dobroski" clearly distinguishable.

Nicole Dobroski, Chief
Division of Environmental Science, Planning, and
Management

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Contact Phone: 916.574.1900

August 10, 2023

File ref: Lease 6616

Sent via postal and E-Mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

SUBJECT: Required Application for an Amendment of Lease PRC 6616, a General Lease – Public Agency Use for the Operation and Maintenance of Huntington Beach Pier

Dear Mr. Gates:

Our records indicate that that the City has permitted an operator for an event known as the Huntington Beach Pacific Airshow that will occur in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity constitutes an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City of Huntington Beach (City) for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff has become aware that a proposed event, the Huntington Beach Pacific Airshow, will utilize the Pier.

Based on the information available, the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights

City of Huntington Beach

Page 2

between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier will be closed to the general public on all three days of the event and that the event operator will only allow access to the Pier through the purchase of a ticket sold by a private vendor. The event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating will also be restricted, during the event is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

"Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization through the form of an amendment to the lease. An application for a lease amendment is urgently required for the proposed event.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- Photos or diagrams showing where the closure of the pier begins.

City of Huntington Beach

Page 2

We request your cooperation in this matter and urge the City to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

D4AAC71802234D2

Seth Blackmon

Chief Counsel, Legal Division

cc: Al Zelinka, City Manager, City of Huntington Beach
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division

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Contact Phone: 916.574.1900

August 10, 2023

Sent via postal and E-Mail (info@pacificairshow.com)

Pacific Airshow, LLC
5252 Bolsa Avenue
Huntington Beach, CA 92649

SUBJECT: State Lands Lease Required for the Proposed Pacific Airshow in the Pacific Ocean, Huntington Beach, Orange County

Dear Pacific Airshow, LLC:

Our records indicate that you are the planned operator of the Huntington Beach Pacific Airshow that will occur in and along the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity will occupy State land under the jurisdiction of the California State Lands Commission (Commission).

As general background, the Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code §§ 6009, 6009.1, 6301, and 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit

Pacific Airshow, LLC

Page 2

of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections

Additionally, please be advised that the Pacific Ocean is subject to the Public Right of Navigation. This right provides that the public may navigate and exercise the incidents of navigation in a lawful manner. Such uses may include, but are not limited to, boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study (*People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040). Events and activities are not allowed to restrict or impede the navigation and recreational rights of the public except under limited circumstances, and only with the advance approval and authorization of the Commission.

Based on the information available, staff understands that the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Huntington Beach Pier will be closed to the public on all three days of the event. There will also be restricted public recreational access along the beach and in the ocean during the event, and boating in the area will be restricted. Moreover, the event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. You are therefore required to obtain a lease from the Commission for the use of State land.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.

Pacific Airshow, LLC

Page 2

If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

We request your cooperation in this matter and urge you to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

Seth Blackmon

D4AAC71802234D2...
Seth Blackmon

Chief Counsel, Legal Division

cc: Warren Crunk, Legal Division
Lucinda Calvo, Legal Division
Ken Foster, Land Management Division
Kelly Connor, Land Management Division

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Contact Phone: 916.574.1900

August 10, 2023

Sent via postal and E-Mail (info@pacificairshow.com)

Pacific Airshow, LLC
5252 Bolsa Avenue
Huntington Beach, CA 92649

SUBJECT: State Lands Lease Required for the Proposed Pacific Airshow in the Pacific Ocean, Huntington Beach, Orange County

Dear Pacific Airshow, LLC:

Our records indicate that you are the planned operator of the Huntington Beach Pacific Airshow that will occur in and along the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity will occupy State land under the jurisdiction of the California State Lands Commission (Commission).

As general background, the Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code §§ 6009, 6009.1, 6301, and 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

The State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The State holds these lands for the benefit

Pacific Airshow, LLC

Page 2

of all people of the State for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court decision. Such boundaries may not be readily apparent from present day site inspections

Additionally, please be advised that the Pacific Ocean is subject to the Public Right of Navigation. This right provides that the public may navigate and exercise the incidents of navigation in a lawful manner. Such uses may include, but are not limited to, boating, fishing, hunting, swimming, bathing, standing, wading along the waterfront, anchoring, picnicking, bird watching, and nature study (*People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040). Events and activities are not allowed to restrict or impede the navigation and recreational rights of the public except under limited circumstances, and only with the advance approval and authorization of the Commission.

Based on the information available, staff understands that the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Huntington Beach Pier will be closed to the public on all three days of the event. There will also be restricted public recreational access along the beach and in the ocean during the event, and boating in the area will be restricted. Moreover, the event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. You are therefore required to obtain a lease from the Commission for the use of State land.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage you to complete and submit an application as soon as possible. The Online Application will require you to provide the following (as a minimum):

- Copies of all currently approved or in process permits with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A drawing of the existing activity area, including all dimensions and proposed improvements.

Pacific Airshow, LLC

Page 2

If you fail to apply to the Commission for a lease, as codified in California Public Resources Code sections 6224.3 and following, trespassing structures may be subject to administrative enforcement. After an administrative enforcement action, the Commission may impose penalties of up to \$1,000 per day until a lease is obtained or the structures are removed.

We request your cooperation in this matter and urge you to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

Seth Blackmon

D4AAC71802234D2...
Seth Blackmon

Chief Counsel, Legal Division

cc: Warren Crunk, Legal Division
Lucinda Calvo, Legal Division
Ken Foster, Land Management Division
Kelly Connor, Land Management Division

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd, Suite 300
Long Beach, CA 90802-4302
(562) 590-5071



February 21, 2024

Mr. Michael Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Mr. Eric G. Parra
Interim City Manager
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Mr. Kevin Elliott
Chief Executive Officer
Code Four
5252 Bolsa Ave
Huntington Beach, CA 92649

Re: October 2023 Pacific Air Show's Privatization of Public Land and Waters in Huntington Beach Without a Requisite Coastal Development Permit

Dear Addressees:

This letter is written to you regarding the October 2023 Pacific Air Show ("the air show"), which is annually authorized by the City of Huntington Beach ("the City") and organized by Code Four. Coastal Commission ("Commission") staff has confirmed that at 2023's air show, and others in previous years, sizeable private bleacher seating was constructed along the shoreline between the Huntington Beach Pier southward to approximately Beach Boulevard, members of the public were prohibited from crossing the shoreline and accessing state tidelands seaward of the bleacher seating, and public access to the entirety of the Huntington Beach pier was blocked for the exclusive private use of ticket purchasers throughout the duration of the event.¹ Commission staff has also confirmed that significant fees were charged for vehicular and RV access to the City's beach parking lots leading up to and during the airshow.²

Prior to and after the 2023 air show, Commission staff sent several emails and letters to representatives from the City's Department of Community and Library Services on July 26, 2023, August 7, 2023, and October 13, 2023, raising Commission staff's questions and potential concerns regarding unpermitted privatization of public land at the 2023 air show, which will be discussed in further detail below, and our desire to meet with the City to discuss. Unfortunately, Commission staff never received a substantive response from the City addressing the concerns or demonstrating a willingness to meet and discuss further.

¹ Please see Exhibit 1 for reference.

² Please see Exhibit 2 for reference.

Please know that Commission staff understands the popularity of this annual event within the Huntington Beach and greater Orange County communities, as well as the economic benefits that such events can produce for local businesses and coastal cities with limited financial resources. Given that context, Commission staff would like to work with the City to appropriately authorize the event and address Commission staff's concerns regarding the 2023 and potential future air show's privatization of public land on Huntington City Beach, state tidelands at and below the mean high tide line ("MHTL"), and the Huntington Beach Pier without a requisite coastal development permit ("CDP"). As such, each concern will be discussed separately in further detail below.

Partial Closure of State Tidelands and State Waters

Commission staff has confirmed that during the October 2023 Airshow: (1) buoys were placed in the ocean south of the Huntington Beach pier to prevent the public from entering and accessing state waters; and (2) fencing and air show personnel were stationed near the shoreline adjacent to the private bleacher seating to prevent the public from accessing adjacent state tidelands.

Commission staff understands that the City has permitting authority over the area of the beach landward of the MHTL. However, the City's Coastal Element, which is part of its certified LCP, provides that the City's LCP policies only apply to the geographic portion of the City that falls within the coastal zone. As such, state tidelands and portions of the Huntington Beach Pier at and below the MHTL remain under the Commission's retained permit jurisdiction. See Section 245.06.B.1 of the City's LCP Implementation Plan ("IP")³ and Coastal Act Section 30519(b)⁴. Furthermore, Section 245.06 of the City's Municipal Code states:

*The Coastal Commission's original permit jurisdiction includes all tidelands, submerged lands, or public trust lands whether filled or unfilled unless the Coastal Commission has delegated original permit jurisdiction to the City for areas potentially subject to the public trust but which are determined by the Coastal Commission to be filled, developed, and committed to urban use pursuant to Section 30613 of the Coastal Act. **Development located in the Coastal Commission's original permit jurisdiction requires approval of a Coastal Development Permit issued by the Coastal Commission in accordance with the procedure as specified by the California Coastal Act.** [emphasis added]*

In addition, under well-settled state law, the State of California (acting by and through the California State Lands Commission ("SLC")) owns the tidelands and submerged lands seaward of the MHTL, and these tidelands are held in public trust for the public. Article X, Section 4 of the California State Constitution states:

³ LCP IP Section 245.06.B1 states: Coastal Permit Issued by the Coastal Commission. Developments on tidelands, submerged lands, or navigable waterways require a permit issued by the California Coastal Commission in accordance with the procedure as specified by the California Coastal Act.

⁴ Coastal Act Section 30519(b) states: Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

No individual, partnership, or corporation, claiming or possessing the frontage of tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this state shall be permitted to exclude the right of way to such water whenever it is required for public purpose, nor to destroy or obstruct free navigation of such waters; the Legislature shall enact such as will give the most liberal construction of this provision so that access to the navigable waters of this State shall always be attainable for the people thereof. [emphasis added]

Although components of the October 2023 air show within the City's permit jurisdiction may qualify as a temporary event per the City's certified LCP and, thus, may be exempt from CDP requirements, this exemption does not grant the City and/or Code Four the authority to prohibit public access to state tidelands at and below the MHTL at any portion of Huntington City Beach without proper authorization from the Commission.

Partial Closure of Huntington City Beach and Construction of Private Bleacher Seating

As stated above, Commission staff has confirmed that sizeable private bleacher seating was constructed along the shoreline between the Huntington Beach Pier southward to approximately Beach Boulevard. Commission staff has also confirmed that individual ticket prices listed on the air show's website to access Huntington City Beach between the pier and approximately Beach Boulevard during the event varied between \$25 and \$299, and group seating prices between \$1,990 and \$4,950 depending on the specific type of seating and accommodations.⁵

The City's certified LCP generally allows temporary events without a CDP if they meet certain criteria per Section 245.08.H of the City's LCP, Implementation Plan ("IP"), and zoning code. However, the City's Downtown Specific Plan ("DSP"), which is also part of the City's LCP IP, and supersedes the City's zoning codes in specific designated areas of Huntington Beach per the City's Coastal Element, requires a CDP for any beach closure in the downtown area. Specifically, the City's DSP Section 3.3.7.15 includes the following requirement regarding the beach area:

Closure to public use of any portion of the beach inland of the mean high tide line is not encouraged and requires a coastal development permit which must maintain the public's right to gain access to State tidelands. Measures that limit public use of the beach shall be limited to those necessary to address documented public safety events that cause a risk or hazard to the general public and shall be the minimum necessary to address the potential risk or hazard to the general public. The need for continuation of safety measures that limit public access shall be reassessed on a periodic basis to assure maximum public access is provided. Limited closure for beach maintenance may be allowable pursuant to a coastal development permit. [emphasis added]

Commission staff notes that Section 245.08 of the City's Municipal Code exempts certain temporary events from CDP requirements. Temporary events include "exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use." "Exclusive use" is defined as:

⁵ Please see Exhibit 2 for reference.

A use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself. Sandy beach area includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest. Coastal resources include, but are not limited to, public access opportunities, visitor and creational facilities, water-oriented activities[.]

As stated above, construction of the private bleacher seating on Huntington City Beach and limiting access to this portion of the beach for ticket purchasers occurred without a CDP in violation of the public access protection policies set forth in the City's DSP Section 3.3.7.15. Again, it is Commission staff's position that DSP Section 3.3.7.15 establishes separate and specific requirements for the downtown beach area that supersede other temporary events exemptions that may otherwise be authorized in this jurisdiction. Commission staff also understands the City may be concerned that the public was excluded from these portions of state tidelands and state waters due to safety risks associated with the air show, but despite these concerns, such measures that restrict access to state waters and tidelands require Commission authorization.

Complete Closure of Huntington Beach Pier

Commission staff has also confirmed that the entirety of the public municipal Huntington Beach pier ("the pier") was closed off with fencing and regulated by air show personnel for the exclusive use of air show ticket purchasers leading up to and during the event. Tickets to access the pier during the air show were listed on the event's website for \$50 to \$75 per day.⁶ As referenced above, Section 245.06.B of the City's LCP IP and Section 30519(b) of the Coastal Act provide that the Commission retains permit issuing authority over development undertaken on state tidelands, which includes portions of the pier at and seaward of this designation. In addition, the City's Lease No. PRC 6616.1 ("the lease") with the SLC imposes certain Public Trust and contractual obligations on the City regarding public access to the pier, commercialization of the pier, and pier closures. The lease premises includes all portions of the pier from Boundary Line Agreement 84 and the 1955 MHTL designation seaward.⁷

Special Provision 3 of the lease provides that:

Lessee (the City) acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.
[emphasis added]

General Provision 5(g) provides that "use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction

⁶ Please see Exhibit 3 for reference.

⁷ Please see Exhibit 4 for reference.

whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.”

General Provision 6(a)(3) provides that “Lessor (SLC) expressly reserves to the public an easement for convenient access across the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease[.]”

General Provision 6(e) provides that “Lessee (the City) shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with the Lessee’s use and enjoyment of the Lease Premises.”

Closure of the pier for the private benefit of air show ticket purchasers throughout the duration of the event unreasonably interferes with and limits public trust rights per Special Provision 3 of the lease. Further, this closure was clearly not intended to protect public health and safety during construction related activities per General Provision 6(a)(3), nor did the public’s presence on the pier during the air show constitute a material interference with the City’s use and enjoyment of the lease premises per General Provision 6(e).

These same concerns regarding the October 2023 air show’s unauthorized use of the pier were stated in a letter from SLC to City Attorney Mr. Michael Gates on August 10, 2023. In that letter, SLC requested that the City apply for a lease amendment to utilize the pier in such a private commercial manner during the airshow. Unfortunately, the City never responded to SLC’s letter and did not apply for a requisite lease amendment. As such, Commission staff has communicated with SLC, and both agencies have determined that the October 2023 air show’s unpermitted closure and privatization of the pier constitutes a breach of the above-mentioned conditions of the lease.

Finally, as stated above, the October 2023 airshow prohibited public access to the entirety of the pier throughout the duration of the event, including portions of the pier at and beyond the MHTL, which falls under the Commission’s retained jurisdiction. This closure did not receive the necessary authorization from the Commission, and, thus, constitutes a violation of the public access protection policies of the Coastal Act.

Increase in City Beach RV Parking Lot Rates

As stated above, Commission staff has confirmed that RV camping spots in City beach parking lots were sold for \$4,500 to camp between Thursday, September 28 and Monday, October 2, 2023. This adjustment was a 1,630% to 1,025% increase in RV camping spot rates as the City normally only charges between \$65 and \$100 per night depending on the reservation.⁸ Please note that the City’s DSP Section 3.3.7.15 provides:

*Public beaches and parks shall maintain lower-cost user fees and parking fees, and maximize hours of use to the extent feasible, in order to maximize public access and recreation opportunities. **Limitations on time of use or increases in user fees or parking fees shall be subject to coastal development permit requirements in accordance with Chapter 245 of the HBZSO.***

⁸ Please see Exhibit 5 for reference.

The implementation of restrictions on public parking along public streets with the potential to impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking” signs, red curbing, physical barriers and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.

Public recreation and access opportunities at public beaches and parks shall be protected, and where feasible, enhanced as an important coastal resource . . . All beach amenities available to the general public on the City’s public beaches (including those owned and operated by the City and the State) shall be available to all members of the public on an equal basis. [emphasis added]

As such, the City’s authorization of the substantial increase in RV camping rates during and throughout the air show discussed above contradicts Section 3.3.7.15 of the City’s DSP, which, in part, requires lower-cost parking fees at the City’s public beaches. Again, please note that the City’s DSP supersedes the City’s IP or zoning code for development conducted within the Huntington Beach downtown area per the City’s Coastal Element, which includes the City beach parking lots. Further, it is assured that many, if not most, of the public is not able to afford such rate increases to access this popular beach amenity, which is supported and maintained by taxpayer dollars.

Potential Changes to Flight Patterns to Avoid Bolsa Chica Ecological Reserve

Through this letter Commission staff would also like to address significant environmental concerns related to flight paths during the air show. Commission staff received a copy of the June 29, 2023, letter from Carstens, Black & Minter, LLP representing the Bolsa Chica Land Trust, to the City which raises concerns regarding threats to the wildlife and habitat of the Bolsa Chica Ecological Reserve stemming from the airshow. Commission staff has also received a copy of City Attorney Mr. Michael Gates’s July 11, 2023, response to that letter.

The City’s IP states that the Director of Community Development, or the City Council through direction to the director of Community Development, may determine that a temporary event shall be subject to CDP review, even if the criteria set forth in Section 3 are not met, if the Director or City Council determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances include situations where the event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as described in Section 2. As stated in the Bolsa Chica Land Trust’s letter, as well as in an August 10, 2023 letter emailed to the City, Code Four, and the Federal Aviation Administration (“FAA”) from SLC and the California Department of Fish and Wildlife (“CDFW”), and in another email sent to the City and Code Four from the United States Fish and Wildlife Service (“USFWS”), airshows have the potential for significant adverse impacts on local coastal resources, including but not limited to, low aircraft passing over the wetlands and the startling noise of jets causing flushing of rare and endangered species of birds from the Bolsa Chica Ecological Reserve. Furthermore, the proximity of the airshow jets to neighboring oil infrastructure and potential for a crash could release contaminants from the oil infrastructure into the wetlands. As such, this potential for significant adverse impacts to local coastal resources triggers the City to review the airshow per the City’s IP, and to consider

both alternative flight routes and altitude requirements, regardless of whether the airshow qualifies as a discretionary or ministerial project per the California Environmental Quality Act ("CEQA"). We ask that the City work with SLC and CDFW and other relevant regulatory agencies to review alternative flight routes and altitude requirements in order to best protect wildlife and wildlife habitat for protected species at the Bolsa Chica Ecological Reserve.

Request for Additional Information

Through this letter, to better understand the operational roles of the parties involved, and to help explore options for resolution, Commission staff is also requesting copies of both the City's operating agreement with Code Four for the air show, and the fully executed settlement agreement (not an executive summary) between both parties reached in *Pacific Airshow, LLC v. City of Huntington Beach*. It appears that these would be public documents available for disclosure under the California Public Records Act and Commission staff expects they will be released to help us determine a mutually desirable outcome.

Resolution

Commission staff would like to reiterate that it is not the intent of this letter, or any subsequent meetings between the City, Commission staff, and other involved parties to prohibit future air shows from taking place in Huntington Beach. However, the October 2023 air show's widespread unpermitted privatization of public land discussed in this letter is not compliant with the City's certified LCP, violates public access protection policies of the Coastal Act, and breaches contractual obligations of the City's lease with SLC. As such, to avoid future activities that might expose the City and Code Four to formal enforcement action(s), Commission staff is requesting a meeting with all parties involved to ensure that future air shows may continue operating in a manner compliant with all relevant statutory and contractual requirements. Please contact me via email at spenser.sayre@coastal.ca.gov by **March 5, 2024**, to schedule a meeting and discuss.

Sincerely,



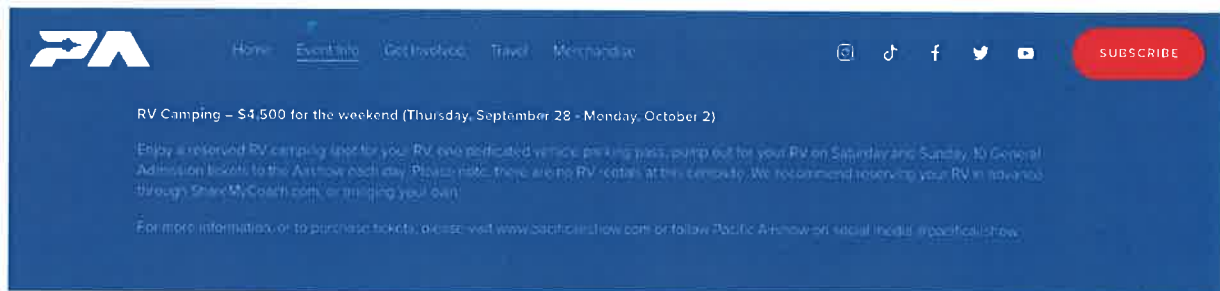
Spenser Sayre, Esq.
South Coast District Enforcement

Cc: Kate Huckelbridge, Executive Director, CCC
Karl Schwing, Deputy Director, CCC
Lisa Haage, Chief of Enforcement, CCC
Andrew Willis, Enforcement Counsel, CCC
Meg Vaughn, Coastal Program Analyst, CCC
Wendy Hall, Environmental Program Manager, California State Lands Commission
Kelly Connor, Public Land Management Specialist III, California State Lands Commission
Lucinda Calvo, Senior Attorney, California State Lands Commission

EXHIBIT 1



EXHIBIT 2



The screenshot shows the top portion of the Pacific Arrow website. The header is dark blue with the 'PA' logo on the left. Navigation links include 'Home', 'Event Info', 'Get Involved', 'Travel', and 'Merchandise'. Social media icons for Instagram, TikTok, Facebook, Twitter, and YouTube are on the right, along with a red 'SUBSCRIBE' button. The main content area has a dark blue background with white text. It features a heading for 'RV Camping' with dates, followed by a paragraph describing the benefits of the package and a note about no RV rentals. A final line provides a website URL and social media handles.

PA Home Event Info Get Involved Travel Merchandise

RV Camping – \$4,500 for the weekend (Thursday, September 28 - Monday, October 2)

Enjoy a reserved RV camping spot for your RV, two dedicated vehicle parking pass, pump out for your RV on Saturday and Sunday, 10 General Admission tickets to the Arrow each day. Please note, there are no RV rentals at this venue. We recommend reserving your RV in advance through ShareMyCoach.com, or bringing your own.

For more information or to purchase tickets, please visit www.pacificarrow.com or follow Pacific Arrow on social media @pacificarrow.

EXHIBIT 3

[Home](#) [Event Info](#) [Get Involved](#) [Travels](#) [Merchandise](#)



SUBSCRIBE

General Admission – \$25/ticket

Experience the ultimate thrill at Show Center, located right on the water's edge. Access to this area guarantees up-close encounters with aircraft, parachute jumps and more. Bring your own chairs, blankets, umbrellas, and come prepared for a day at the beach like never before. EZ Up tents are not permitted in this area to ensure an unobstructed view for all.

Pier Seating – \$50 Friday; \$75 Saturday & Sunday

Experience the Airshow from an unreserved, elevated seat on the iconic Huntington Beach Pier, narrated by the Airshow's live announcer feed. Nearby food trucks, beverage stands, fun fair and exhibitions add to the experience.

Premiere Club Seating – \$199 for Friday; \$299 for Saturday & Sunday

This all-inclusive premiere ticket is perfect for dedicated Airshow enthusiasts. This tented, reserved section is located directly next to Airshow Show Center; your ticket includes all-day hosted food and beverages, access to private air-conditioned restrooms, and an unforgettable view of exciting aerobatic performances – all in the comfort of a tented pavilion complete with tables, chairs and patio umbrellas.

Premiere Club + Reserve Table for 10 – \$1,950 for Friday; \$2,930 for Saturday & Sunday

Enjoy all the premiere offerings available in the Premiere Club, plus a reserved table for up to 10 guests with your name on it!

Cabanas – \$3,950 for Friday; \$4,950 up to 20 people for Saturday & Sunday

Private, fully-furnished cabanas provide an unforgettable setting to host family, friends, coworkers and clients. With lounge seating, Adirondack chairs, and entertaining tables, our private, tented beach space at Show Center offers a complete cabana setup. Enjoy nearby access to a cash bar and indulge in a la carte food options available for advanced purchase (additional costs apply).

Chalets – \$30,000 for up to 85 guests; \$35,000 for up to 135 guests

EXHIBIT 4

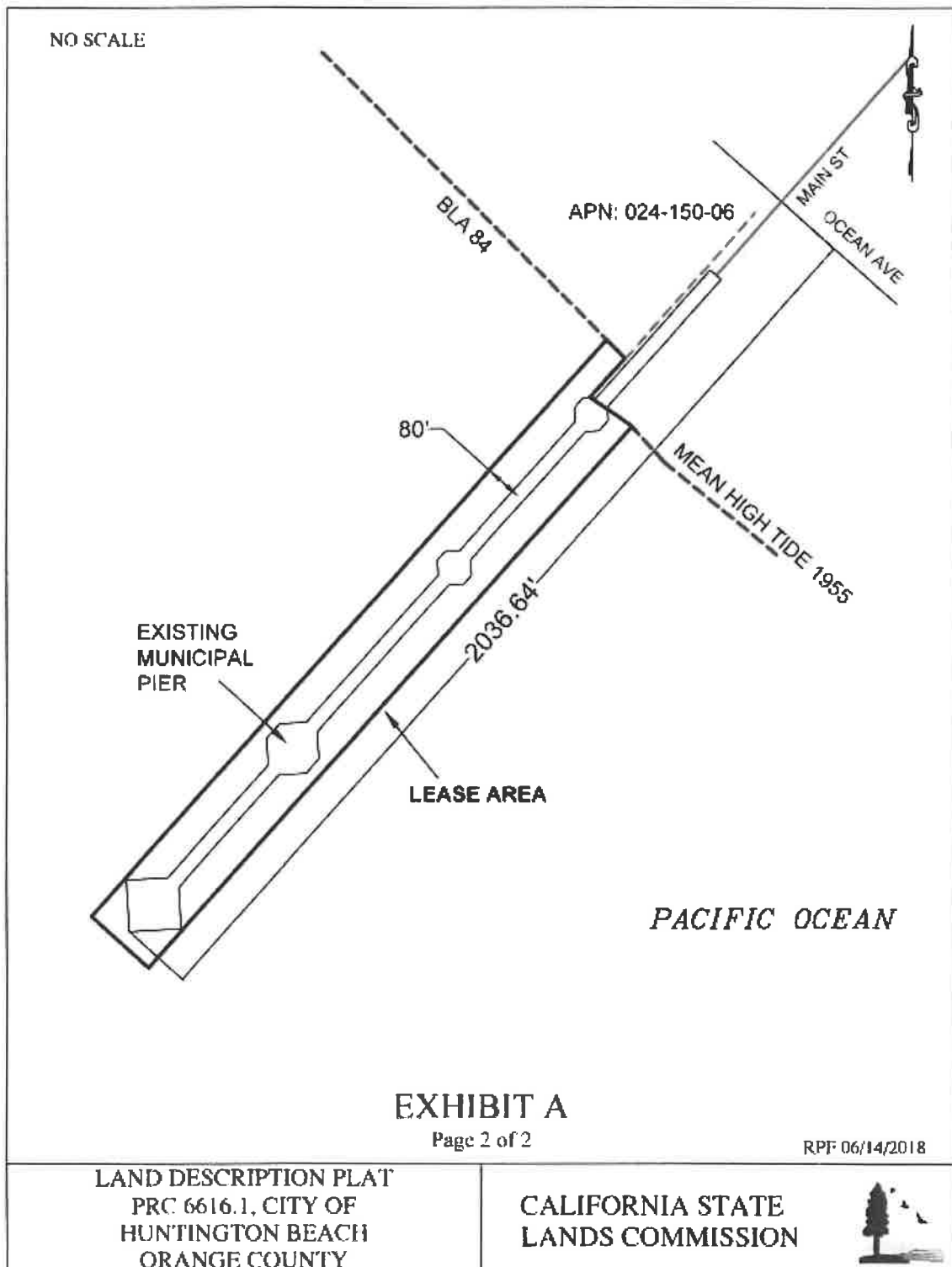


EXHIBIT 5

WE'RE NOW OPEN IN SEPTEMBER! (Not us starting September 18, 2021)


**Huntington Beach
RV CAMPGROUND**
[Book Now](#)
STANDARD RATE

Sunday–Thursday: \$75 per night
 Friday–Saturday: \$100 per night
 Holidays*: \$100 per night

DISCOUNTS AVAILABLE

Senior (62+) / Disabled*
 \$10 discount per night

*Holidays include federal holidays, the week leading up to Thanksgiving and the week between Christmas and New Year's Day.

*Must show ID for Senior and/or valid placard for Disabled discount. Eligible registered camper must be the occupant of the site in order to receive the discount.

ADDITIONAL FEES**Additional fees include:**

- Site lock fee: \$10 per night *
- Reservation change fee: \$10

Huntington Beach RV Campground (Day after Labor Day - May 31)

All campground information and reservations can be found at www.hbrv.org.

HUNTINGTON BEACH RV CAMPGROUND RATES	
Camper vehicle or auto with trailer	\$75.00 per night (Sunday - Thursday) \$100.00 per night (Friday - Saturday & Holidays*)
Seniors (62+) and campers with Disabled Person placard	\$65.00 per night (Sunday - Thursday) \$90.00 per night (Friday - Saturday & Holidays*)
Extra vehicle fee	\$15.00 per calendar day
Reservation Cancellation Fee (Greater than 2-days prior to arrival date)	\$25.00
Reservation Cancellation Fee (2 or less days prior to arrival date)	First Night's Daily Rate
Change Fee	\$10.00
Site Lock Fee	\$10.00 per night
*Holiday Rates: Thanksgiving Week (Sunday preceding Thanksgiving through Saturday night following Thanksgiving), Christmas Week (day preceding Christmas through New Year's Eve), Day preceding Veterans Day (observed), Martin Luther King Jr. Day, Presidents' Day, and Memorial Day.	

Contact us:

Phone: (714) 536-5281 (Option 2)

Email: hbrvcampground@surfcity-nb.org



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



April 7, 2025

Connor Hyland
Senior Deputy City Attorney
City of Huntington Beach
2000 Main Street, 4th Floor
Huntington Beach, California 92648
Connor.Hyland@surfcity-hb.org

**Subject: DRAFT ENVIRONMENTAL IMPACT REPORT for the Pacific Airshow
Huntington Beach Project, SCH No. 2024020006, ORANGE COUNTY, CA**

Dear Connor Hyland:

The California Department of Fish and Wildlife (CDFW) reviewed the Draft Environmental Impact Report (DEIR) from the City of Huntington Beach (City) for the Pacific Airshow Huntington Beach Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines¹.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802). Similarly, for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

PROJECT DESCRIPTION SUMMARY

Proponent: Kevin Elliott, Pacific Airshow LLC (Project proponent/Applicant)

Objective: The Project would provide an Airshow in Huntington Beach that features civilian and military aircraft flybys and aerial acrobatics; air racing; electric vehicle and

¹ CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Connor Hyland
City of Huntington Beach
April 7, 2025
Page 2 of 23

drone displays; competitions and shows; and, displays of other emerging aviation/mobility technologies. To achieve this, the Project will use a temporary runway on the beach for helicopters and aircraft. Additional Project features include visitor-serving entertainment, services, and amenities that include but are not limited to: a variety of viewing areas, vehicle and aircraft demonstrations; illustrations; flight simulations; merchandise tents; concessions; food trucks; live music entertainment; skateboard and bicycle motocross bowl competitions; sandcastle building competitions; art installations; and, pyrotechnic shows. This event has been held annually in the City during the fall season each year since 2016, except in 2020 due to the COVID-19 pandemic. Airshow activities will typically begin at approximately 10am and may extend to 11pm. New events that have not historically occurred include multi-day air racing; a music festival; nighttime flyovers including parachute jumps onto the beach; nightly pyrotechnic shows to be discharged from either aircraft or an ocean barge; and, landing aircraft on a temporary runway on the beach.

Location: The Project is in the City of Huntington Beach, which is in coastal Orange County. The on-the-ground event portion of the Airshow (the “show center area”) is located on the beach; its boundaries are approximately from 7th Street to Beach Boulevard along Pacific Coast Highway, and from Pacific Coast Highway to the Pacific Ocean (including a portion of the Huntington Beach Pier). The Project describes the Airshow performance area as being the primary area for aircraft flybys and aerial acrobatics. This performance area is over the Pacific Ocean, adjacent to the show center area, with an east-west length of approximately 3,000 feet and a north-south length of approximately 12,000 feet. The performance area is identified by 16 buoys placed in the ocean. Many of the aircraft flights spill out of the performance area into the temporary flight restriction (TFR) airspace administered by the Federal Aviation Administration (FAA) for the airshow. The TFR is a five-nautical mile ring centered on the airshow’s performance area. The show center area and the airshow performance area collectively comprise the Project Site. For the purposes of technical analysis within the DEIR, a broader study area was defined that extends beyond the Project Site to reflect the potential impacts associated with civilian and military flybys and aerial acrobatics transiting to/from the Airshow performance area.

Timeframe: Future airshows are anticipated to be held for three to five days, generally Friday through Sunday or up to Wednesday through Sunday, with aircraft flight familiarization and flight practice flyovers beginning as early as Monday of the week of the Airshow.

Settlement: The City and the Project proponent entered into a *Settlement Agreement and General Release*² (Settlement), effective May 9, 2023, following litigation pertaining to the City’s cancellation of the final day of the Airshow in 2021. The Settlement contemplates the City conducting environmental review as required by CEQA. The Settlement also requires that if the Project proponent desires to conduct future

² https://cms3.revize.com/revize/huntingtonbeachca/SETTLEMENT%20AGREEMENT%20AND%20GENERAL%20RELEASE_FINAL_SIGNED.pdf

Connor Hyland
City of Huntington Beach
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airshows, they and the City will enter into a separate “Air Show Event Agreement” to hold at least one airshow event per year, on dates selected by the Project proponent, for a term of 10 years with the option to renew up to 3 times for additional 10-year terms.

Biological Setting: The Project Site and surrounding areas contain a wide variety of extraordinarily sensitive habitats and wildlife species, including both terrestrial and marine resources. The area immediately surrounding the Project Site contains various protected coastal wetlands, including Bolsa Chica Ecological Reserve (BCER). BCER is an approximately 1,300-acre coastal estuary which contains open water, mudflats, coastal dunes, riparian habitats, freshwater marsh, and saltwater marsh. BCER’s saltwater marsh is one of largest remaining in Southern California. More than 200 avian species have been identified there. BCER is an important stopover along the Pacific Flyway for hundreds of migratory bird species. CDFW is responsible for on-site management of BCER, which provides important habitat for sensitive wildlife species, including:

- Western snowy plover (*Charadrius nivosus nivosus*; Federal Endangered Species Act (ESA)-listed threatened, California Species of Special Concern (SSC))
- Light-footed Ridgway’s rail (*Rallus obsoletus levipes*; ESA-listed endangered, California Endangered Species Act (CESA) listed endangered, State Fully Protected (FP))
- Coastal California gnatcatcher (*Polioptila californica californica*; ESA-listed threatened, SSC)
- Belding’s savannah sparrow (*Passerculus sandwichensis beldingi*; CESA-listed endangered)
- California least tern (*Sterna antillarum browni*; ESA-listed endangered, CESA-listed endangered, FP)
- White-tailed kite (*Elanus leucurus*; FP)
- Peregrine falcon (*Falco peregrinus anatum*)
- Burrowing owl (*Athene cunicularia*; CESA candidate)
- Northern harrier (*Circus hudsonius*; SSC)
- Cooper’s hawk (*Accipiter cooperii*; CDFW Watch List (WL))
- Osprey (*Pandion haliaetus*; WL)
- Tricolored blackbird (*Agelaius tricolor*; CESA-listed threatened)
- California brown pelican (*Pelecanus occidentalis californicus*)
- Short-eared owl (*Asio flammeus*; SSC)

Additionally, less than three miles from the center of the airshow performance area, there are two marine protected areas: Bolsa Bay State Marine Conservation Area (SMCA) and Bolsa Chica Basin SMCA. Under the State Marine Life Protection Act, SMCAs protect tidal lands, wetlands up to the mean high tide line, fish, and fish habitat for many species that are both state and federally managed.

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Project History: CDFW has an extensive history communicating with the FAA, the California Coastal Commission, the State Lands Commission (SLC), the United States Fish and Wildlife Service (USFWS), and the City regarding the Airshow and its impacts to wildlife. On August 25, 2023, CDFW and SLC jointly sent a letter to the City describing impacts to birds due to the 2021 and 2022 airshows. These impacts included aircraft dropping streamers in BCER, and repeated low flyovers by military aircraft that flushed sensitive birds. In that letter, CDFW and SLC emphasized that sound pollution and low overhead flights posed a threat to birds and other wildlife. CDFW also provided the City with comments during the public review period for the Initial Study and Notice of Preparation for this Project, in a letter dated March 4, 2024³. At that time, CDFW again voiced concerns about impacts to BCER and the sensitive species therein. CDFW attaches those prior communications because they remain relevant and applicable to the Project and the DEIR.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Additional comments or other suggestions may also be included to improve the document.

COMMENT # 1: General Disclosure and Mitigation of Impacts to Biological Resources

Issue: The DEIR does not provide a clear, full disclosure and analysis of potentially significant impacts to biological resources, nor does it include mitigation measures to reduce those impacts to a level of less than significant.

Specific Impact: Without a full disclosure and analysis of the Project's effect on biological resources, including mitigation measures in a Mitigation, Monitoring, and Reporting Plan (MMRP), the Project is very likely to have significant adverse effects on special status species due to the Project occurring during bird nesting season, or aircraft flying over BCER (either during or outside of bird nesting season). Furthermore, without robust avoidance, minimization, and mitigation measures, the Project as described will interfere substantially with the movement of native resident or migratory wildlife species, with established native resident or migratory wildlife corridors, and impede the use of native wildlife nursery sites.

Why impact would occur: The DEIR dismisses potential significant impacts to biological resources by improperly relying on assumptions that certain activities would occur (described below), and improperly concludes that impacts to biological resources will be avoided. However, there are no actual measures or other enforceable

³ Available at: https://files.cephanet.opr.ca.gov/295302-1/attachment/t54ROc5yulkIGs6au1ip-fpXNsaQryPCQ5ToRpV_DiKthRZqPyWYgsSlapUJ4vZFMtdAdmzc_Qd7TvU60

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mechanisms to ensure the DEIR's assumptions would in fact occur, nor does the DEIR analyze and disclose impacts to biological resources that would occur in the absence of the assumptions. This contrasts with the requirements of CEQA and the DEIR's own *Approach to Environmental Analysis* (DEIR Section 3.0.2) which states, "[t]he project-level analysis will estimate the impacts to each resource category before the implementation of applicable mitigation measures. The analyses will then estimate the impacts to each resource category after the implementation of applicable mitigation measures." Assumptions relied upon in the analysis and for which there is no basis to enforce or otherwise ensure the assumptions are accurate include:

- a. the Airshow would not be scheduled during bird breeding season – it is improper to assume this because the Project proponent has discretion to determine when the Airshow would occur per the Settlement;
- b. the Project proponent would provide daily formal briefings each day of the Airshow to all pilots about the sensitivity of BCER – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there any other information in the DEIR that indicates the City can require this measure;
- c. the Project proponent would request avoidance of overflights over BCER – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure, moreover, it is not up to the City or the Project proponent to finalize flight paths because, according to the DEIR, the FAA has ultimate authority over flight paths;
- d. when overflights of the BCER cannot be avoided, the Project proponent would request that overflights occur at 1,000 feet above ground level or above – it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure; and
- e. because pilots could be instructed by the FAA to fly over the BCER, pre-activity surveys and biological monitoring would be conducted each year as part of the Project, at least one day prior to the Airshow as well as during the operation of the Airshow to determine whether Airshow activity is impacting bird behavior and to ensure that no Airshow-related debris drifts into the sensitive ecological areas - it is improper to assume this because there is nothing in the DEIR that contemplates this as an enforceable measure, nor is there anything else provided to the public that would indicate the City can require this measure.

As mentioned above, there is no information in the DEIR to indicate that these assumptions can be relied upon to reduce or otherwise avoid potentially significant effects. This is especially the case because the City appears to have no control over the Project proponent's implementation of the Project in accordance with the assumptions either due to the Settlement or the lack of any information in the DEIR to indicate the enforceability of such measures. Specifically, it is not clear within the context of the Settlement and Air Show Event Agreement requirement if the Project proponent will be

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required to abide by the assumptions, or how the City will enforce the assumptions. Section 2.b. of the Settlement states, in part, that the Air Show Event Agreement, “will be based on, and supported by, the completed aforementioned CEQA environmental review, and consistent with the terms of the [Settlement].” Because the Air Show Event Agreement will be based on this environmental review, the City should commit to requiring the assumptions as mitigation measures and ensure they are included in the Air Show Event Agreement so that the Airshow is required to implement them.

Nevertheless, because Project elements like flight path are outside the City and Project Proponent’s control, the Project’s potentially significant impacts to biological resources should be analyzed in the DEIR without reliance on the assumptions. Without disclosure, analysis, and mitigation, the Project could result in significant adverse effects to sensitive nesting, overwintering, migrating, and resident bird species due to the Project occurring during bird nesting season or aircraft flying over BCER (either during or outside of bird nesting season).

Evidence impact may be significant: The DEIR should provide an adequate, complete, and detailed disclosure about the significant effects which the Project may have on the environment (Pub. Resources Code, § 20161; CEQA Guidelines, § 15151). Such disclosure is necessary so CDFW, the public, and decisionmakers may provide comments on the adequacy of proposed avoidance, minimization, or mitigation measures, as well as assess the significance of the specific impact relative to the environment, in particular plant and wildlife species impacted for CDFW (e.g., current range, distribution, population trends, and connectivity). Furthermore, unlike the assumptions discussion in the Biological Resources section of the DEIR, mitigation measures should be memorialized in a MMRP table and written so as to be enforceable (CEQA Guidelines § 15126.4). Finally, absent real avoidance, minimization, and/or mitigation measures, impacts to listed species would also be considered significant pursuant to CESA and/or the federal Endangered Species Act.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #1: Revised analysis. CDFW strongly recommends that the City revise its discussion and analysis of impacts to biological resources, and provides mechanisms to enforce all the assumptions outlined above. If the City cannot enforce the assumptions, then the Biological Resources impact analysis should be based on the Project as it would occur without those assumptions in place (e.g., assess impacts associated with the Project occurring during the bird nesting season, assess impacts with aircraft flying over BCER, etc.). This analysis should include compensatory mitigation for significant impacts as appropriate. If the City asserts that the assumptions are enforceable, then the City should provide evidence as to how the assumptions would be enforceable, the assumptions should be rewritten as enforceable mitigation measures, and be included in the DEIR’s MMRP table.

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COMMENT # 2: Nesting Bird Disturbance

Issue: Impacts to nesting birds, including fully protected, CESA-listed, and ESA-listed species, are likely to be significant due to the lack of any enforceable mechanism for the City to control when the Airshow will be held, and no stated enforceable mitigation.

Specific Impact: Because of the Settlement, there does not appear to be any mechanism for the City to restrict the timing of the Airshow to outside the breeding season. The DEIR relies on the assumption that the Airshow will be scheduled outside the bird breeding season; however, the Settlement indicates that the Project proponent has the right and ability to select the dates for future Airshows, including during important nesting periods for light-footed Ridgway's rail, California least tern, and western snowy plover, as well as a wide variety of common bird species. As detailed in this letter, holding the Airshow during the bird nesting season is likely to result in significant effects to all, or a combination of, the birds identified in the Biological Setting section of this letter.

Why impact would occur: In discussing the potential of the Project to affect birds, the DEIR acknowledges that special-status birds are known to occur in the area and use the beaches and coastal marshes for nesting. The DEIR also indicates that there are breeding sites for California least terns and western snowy plovers that are fenced off from public access. The DEIR does not, however, acknowledge that California least terns and western snowy plovers have also been observed nesting outside the confines of those fenced areas, nor does it discuss other special-status bird species that nest on the beach or in the coastal wetlands. The areas surrounding the show center area, including Huntington Beach, BCER, and other coastal wetlands, are vital habitats for a variety of native species. As the largest coastal wetland remaining in California, BCER supports a heavy concentration of breeding birds.

Because of the ground-nesting behaviors of these species, disturbance of nesting due to Project implementation is prevalent. For example, disturbance from aircraft overflights, fireworks, vehicles, pedestrians, and even blowing trash can result in flushing of nesting birds, increased predation, crushing of eggs, reduced fitness of chicks, and decreases in reproductive success (Jefferson, et al. 2022). Individually, or in combination, the aforementioned impacts can result in significant effects to individual birds as well as a bird population as a whole. For example, California least terns, like many colonial ground nesting birds, rely on coordinated attacks, or mobbing behavior to protect their nests from predators (Jefferson, et al. 2022). In other words, the entire tern colony will react together to resolve a threat. Flushing birds from their nests leaves eggs and chicks vulnerable to thermal exposure and to predators that can take advantage of the parents' absence to prey on eggs and chicks and decimate a nesting site in a short amount of time. Repeated flushing can cause nest abandonment. Therefore, an aircraft or individual/spectator could result in a colony leaving their nests resulting in impacts associated with such flushing.

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Another example of the Project likely resulting in a significant effect on nesting birds involves Western snowy plovers. While not colonial, Western snowy plovers frequently nest within or near tern colonies, and can exhibit increased reproductive success because of the defensive behaviors of terns (Powell 2001). While many different factors combine to influence the reproductive success of birds, nest abandonment remains a primary concern and the Airshow is likely to result in such abandonment if it occurs during the nesting season.

In their 2024 review of California least tern activity at Huntington State Beach (Huntington Beach Wetlands Conservancy 2024), the Huntington Beach Wetlands Conservancy stated:

Overall, since 2008, abandonment has been the major cause of nest loss at this colony. Human disturbance is most likely a major cause for egg non-viability and abandonment which together accounted for over 50% of failed nests (36 nests/63 failed nests). The near constant flushing of birds from the nest reduces incubation time. Fourth of July celebrations on the beach cause disturbance at the colony. In 2024, a boat stationed at the river entrance adjacent to the colony set off fireworks. By July 9, the colony activity was depressed and the colony effectively abandoned. As in previous years, helicopters flying and drone flights over the colony caused the terns to flush from the nests. Paragliders launching from the Santa Ana River channel and flying low over the colony caused the birds to flush frequently in past years.

Although the aforementioned impacts are not the result of the Airshow, low flyovers by jets will have similar effects if they occur during the nesting season. As mentioned in this letter in Comment #4, although the DEIR seems to improperly discount potential impacts from the Airshow based on current activity by aircraft, even if such approach in the DEIR is accurate, which it isn't, the DEIR should, at a minimum, account for the cumulative effect on nesting birds arising from the Airshow.

Another major threat to chicks is insufficient nutrition (Scopel and Diamond 2017). In response to disturbance, some birds may stay longer on the nest, which reduces the time available to forage for food for chicks. Additionally, birds may forage further afield than usual, in order to avoid heavily populated areas or aircraft disturbance, which also leads to reduced feeding of chicks. California least terns are particularly vulnerable, and experience significant loss of chicks in years with low fish abundance.

Depending on where in a species' breeding cycle the Airshow occurs, disturbances can have varying results (Ellenberg, Mattern and Seddon 2013; Jefferson, et al. 2022). If the Airshow occurs just prior to or at the beginning of nesting season, birds may choose not to nest in the area at all. In the case of California least terns and western snowy plovers, the areas near the Project Site represent important breeding sites, with high density of nests. The closest protected tern and plover nesting areas are Seal Beach 3.75 miles to

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the north and Upper Newport Bay Ecological Reserve 6.75 miles to the south. In the absence of a suitable nesting site, an entire season's reproductive effort could be lost. If the Airshow begins after nests have been established, disturbance could lead to mortality of eggs and chicks from nest abandonment, trampling by people or dogs visiting the Airshow, or increased presence of predators drawn to trash and parental absence. If the Airshow occurs toward the end of the nesting season, fledglings could be scared off before they have accumulated the necessary fat reserves to successfully complete migration to their wintering grounds.

Evidence impact may be significant: Least terns and light-footed Ridgway's rails are listed as endangered under both the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA) and are also fully protected under FGC section 3511(b)(6). As a fully protected species, take cannot be authorized by CDFW. CDFW considers adverse impacts to a species protected by CESA to be significant. Take of any endangered, threatened, or candidate species is prohibited, except as authorized by state law (Fish & G. Code §§ 2080, 2085; Cal. Code Regs., tit. 14, §786.9).

As mentioned in the preceding section, individual birds and populations would be affected by the Project during the nesting season. Nests could be abandoned, eggs and/or chicks may not survive, or a season of nesting could be precluded. By itself or in combination, any of these impacts are likely to be significant to individual birds or their population on either a specific or cumulative basis.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #2: Breeding Season Avoidance. If the City is able to restrict the timing of future Airshows, CDFW recommends Mitigation Measure #1 (detailed below) be included in the DEIR and its MMRP table. If the City is unable to restrict timing, CDFW recommends the City include Mitigation Measures #2, #3, and #4, detailed below.

Recommendation #3: Compensatory Mitigation. CDFW recommends the DEIR include a range of potential compensatory mitigation options to offset impacts to nesting birds resulting from the Airshow. Options to explore include conservation and/or restoration of nesting habitat; funding for infrastructure work at conserved coastal wetlands to improve water circulation and habitat conditions; and providing funding to managers of California least tern and western snowy plover nesting colonies for ongoing efforts (i.e., fence repair and predator control). CDFW cautions the City that due to the various factors that could affect the resources, working closely with the Wildlife Agencies and other coastal wetland managers is critical to ensuring that the impacts of the Project will be reduced to below a level of significance.

Mitigation Measure #1: Breeding Season Avoidance. In order to avoid impacts to breeding birds, Airshow activities (including set up and teardown) shall not occur between January 1 and September 15.

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Mitigation Measure #2: Nest Site Surveys and Buffers. The Project proponent shall engage a qualified biologist (familiar with nesting shorebirds and possessing all necessary permits) to survey the technical study area for nesting birds. If nests are found, the qualified biologist shall establish a 300-foot buffer for CESA- or ESA-listed species and a 500-foot buffer for Fully Protected species. The buffer shall be between the Airshow activities, including presence of spectators, and the nest site. The buffer shall be delineated with construction fence, and signs shall be posted along the fence informing the public of the sensitive nature of the nesting site and indicating the area should not be entered. A qualified biologist may determine that additional buffer distance is biologically warranted.

Mitigation Measure #3: Nest Site Monitoring. The Project proponent shall monitor nest sites, including those discovered during the nest site survey and those permanently designated as nest sites (western snowy plover and California least tern nesting areas), during the entire run of the Airshow to ensure spectators do not enter nesting areas and trash and debris are not introduced. Trash and debris shall be removed by or at the direction of a qualified biologist.

Mitigation Measure #4: Compensatory Mitigation. The City shall work closely with CDFW and USFWS (collectively, the Wildlife Agencies) and other coastal wetland managers to determine local needs and develop a compensatory mitigation scenario to be included in the DEIR. This mitigation shall be identified in advance of the Airshow to address certain types of effects and then chosen for implementation after the Airshow to specifically address whatever effects that occurred.

COMMENT # 3: General Avian Disturbance

Issue: Project impacts to migratory and permanent resident avian species are likely to be significant due to the lack of any enforceable mitigation.

Specific Impact: Most aircraft are expected to fly 500 to 1,000 feet above mean sea level (MSL) during their performances, and pilots could be instructed to fly over BCER on their way to or from the performance area. The impacts of low-flying aircraft on the bird species at BCER and other coastal wetlands are significant and should not be underestimated. Behavioral disruptions, increased stress, and habitat alteration caused by jets and other aircraft flying at low altitudes threaten the health and survival of migratory, resident, and wintering birds.

Why impact would occur: CDFW staff and other groups have had opportunity to observe the behavior of birds at BCER in response to overflights, including many instances where birds were displaced from the property or flushed.

- a. On September 30, 2021, military jets associated with the Airshow were filmed executing low flyovers over seasonal ponds and Bolsa Basin in BCER. Approximately 450 individual birds were estimated to have flushed as a result of

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one such flyover. CDFW staff observed another low flyover that day that resulted in the flushing of osprey from a perch in Bolsa Bay.

- b. After the 2022 Airshow, CDFW photographed streamers that had been dropped into BCER that resulted in flushing birds.
- c. Subsequently, CDFW requested that for the 2023 airshow, no flyovers occur over BCER, and that no streamers or other debris be dropped over BCER. Hundreds of pelicans were disturbed and seen flushing after jets flew over BCER during the Airshow despite requests that such flyovers be avoided.
- d. Observations of flushing continued during the 2024 Airshow. Species impacted by the hundreds of individuals include brown pelican, black bellied plover, western sand piper, and red-necked phalarope. More than 20 western snowy plover individuals were also recorded flushing as a result of jet activity.
- e. Flight Tracker activity, taken by CDFW staff, documents continued low flyover over BCER, despite continued requests and requirements for avoidance.
(Staff observations, electronically on file with CDFW)

Behavioral responses to aircraft disturbances add to the daily energy expenditure of birds. When birds are disturbed, they can react with altered behaviors, such as agitation or flushing. Also, a bird may exhibit no outward signs of distress but experience an elevated heart rate (Ellenberg, Mattern and Seddon 2013), increased oxygen consumption, and change in metabolic rate, thus disrupting the bird's energy budget (Kempf and Hüppop 1998). Even outside breeding season, such disturbances can have a high impacts on the individual bird as well as the population. In the winter, birds may require more energy to maintain their body temperature. During the non-breeding season birds need to forage as much as possible to build up fat stores for migration, upcoming breeding activity, or harsh winter conditions (Kempf and Hüppop 1998). Birds that rely on BCER for food and shelter could temporarily abandon these habitats during the Airshow, leading to a loss of critical resources during key times, such as during migration or overwintering periods. This disruption can have significant consequences for their overall health, survival, and reproductive success resulting in significant effects to both individual birds as well as the population.

The proposed timing of the Airshow overlaps with the migratory periods for many species of birds traveling along the Pacific Flyway. As coastal wetlands are important stopovers for annual migration, aircraft disturbances in those areas will affect a large number of birds. Migratory birds rely on specific cues, including environmental factors such as light, temperature, and quiet, to guide their journeys. The presence of high-decibel noise and physical disturbances from aircraft can interfere with these cues, potentially delaying or disrupting migration. This disruption could affect the birds' ability to arrive at their final destination on time, impacting their survival and reproductive success (Schummer and Eddleman 2003). It can also interfere with the birds' flight paths, leading to potential collisions or forced changes in migration patterns. Noise and physical presence of aircraft may also affect the landscape and vegetation used by birds for cover and nesting. While the Airshow is relatively short-lived, repeated

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disturbances over time may lead to cumulative effects that alter the use of BCER's habitat by avian species.

Many species of waterfowl and shorebirds also use BCER as a wintering ground. Shorebirds rely heavily on BCER's mudflats for feeding during migration. Western snowy plover winters and breeds at BCER and can be sensitive to even minor disturbances. Raptors, such as the northern harrier, burrowing owl, and short-eared owl that winter at BCER are particularly at risk, as they tend to remain in one location for extended periods. Disruptions can cause these birds to leave critical feeding or resting areas, reducing their chances of survival during harsh winter conditions. Resident species that live year-round at BCER may also be affected by the Airshow. Species such as the Belding's savannah sparrow and light-footed Ridgway's rail, which are already vulnerable due to habitat loss and predation, may be further stressed by the noise and disruption caused by the event. All the effects mentioned in this paragraph and the preceding ones are likely to result in significant effects to individual birds as well as their populations.

Evidence impact may be significant: CEQA provides protection for special status species, including ESA- or CESA-listed species, Species of Special Concern, and Fully Protected Species (CEQA Guidelines § 15380). The DEIR does not provide an adequate analysis of the potential impacts to special status species, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to special status species will result in the Project having a significant adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by the Wildlife Agencies.

Furthermore, the DEIR does not provide an adequate analysis of the potential impacts to migratory patterns or breeding success of birds, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to migrating or nesting birds will result in the Project continuing to interfere substantially with the movement of native resident or migratory birds or with established migratory corridors or impede the use of native wildlife nursery sites. These are all significant effects on birds and their populations.

Recommended Potentially Feasible Mitigation Measure(s)

Mitigation Measure #5: Monitoring of Bird Behavior. The Project proponent shall engage a qualified biologist (familiar with bird behavior and possessing all necessary permits) to monitor and assess the effects of the Airshow on bird behavior. Monitoring shall occur at BCER, as well as other locations where birds congregate and that may be affected by the Airshow. Monitoring shall include one or more days prior to the start of Airshow activities, to provide a baseline measurement, and shall continue daily until the end of the Airshow. Observations shall be made of bird behaviors and aircraft passing over the study area. The Project proponent shall coordinate with the Wildlife Agencies to develop appropriate study design, methodology, and reporting (see also

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recommended Mitigation Measure # 8 below). If monitoring demonstrates a significant impact to nesting birds, compensatory mitigation as outlined in Mitigation Measure #4 will be implemented, and additional avoidance measures shall be implemented to avoid future impacts. The Wildlife Agencies shall be given the opportunity to review and provide feedback on additional Airshow avoidance measures.

COMMENT # 4: Flyover Disturbance

Issue: As analyzed in the DEIR, impacts to BCER as a result of flyover disturbance are not mitigated to below significant.

Specific Impact: CDFW disagrees with the conclusion that the Project will not result in significant biological resources impacts due to flyover disturbance. Analysis of these impacts in the DEIR is, again, based on specious assumptions as outlined in Comment #1 and not supported by evidence. In fact, it is contradicted by CDFW observations of prior Airshow activity. The Airshow will increase the amount of air traffic that occurs over BCER, Airshow-related debris could drift into sensitive habitat areas, and birds are likely to be displaced due to Project activities.

Why impact would occur: It is inappropriate to compare Airshow-related flyovers to existing conditions at BCER. The DEIR discounts the potential of the Project to impact biological resources because other aircraft fly over BCER, and points to operation of aircraft from the helipad adjacent to BCER (incorrectly identified as being located within the Ecological Reserve) to demonstrate that the airshow will not cause disturbance to birds. The DEIR includes *Table 3.2-2*, which lists Flight Aware aircraft flight observations within the biological survey area for March 11, 2024, to demonstrate “ambient overflight conditions”.

The effort to equate Airshow flyovers to existing conditions is unconvincing for several reasons. For one, the helicopter that uses the helipad next to BCER does not generally cross over BCER; it crosses the beach as it flies to and from an offshore oil platform. In addition, the pilot and CDFW staff coordinate successfully to adjust flight paths as needed to avoid flocks of birds that are loafing under the usual path or other unusual conditions. Second, on the day used in the DEIR to demonstrate ambient flight conditions, 17 aircraft flew over BCER. All but three were at or over 2,000 feet above ground level as they passed over BCER, and none were below 1,300 feet. This is in contrast to observed overflights during past years’ airshows, where multiple aircraft passed over BCER at low altitudes (i.e. well below 1,300 feet) and caused birds to flush (mentioned in Comment #3). Third, while birds may become habituated to aircraft that they encounter frequently, that tolerance will not extend to novel encounters with aircraft of the type that would occur during the Airshow (van der Kolk, et al. 2024). The reaction of a bird to an aircraft will vary depending on factors such as the species of bird, whether they are on a nest, and their familiarity with the particular aircraft. Differences in aircraft size, shape, speed of travel, altitude, and noise level will elicit differing responses. Some birds react strongly to the visual of hang gliders and parachutes, while

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some react to the sound of loud aircraft. For some species, large slow aircraft are more threatening than smaller aircraft (van der Kolk, et al. 2020). Some species react more strongly to helicopters than jets, some the opposite (Fuller, McChesney and Golightly 2018). A stimulus that seems to have a low impact to humans may be perceived by a bird as threatening (Ellenberg, Mattern and Seddon 2013).

Evidence impact may be significant: CEQA provides protection for special status species, including ESA- or CESA-listed species, Species of Special Concern, and Fully Protected Species (CEQA Guidelines § 15380). The DEIR does not provide an adequate analysis of the potential impacts to special status species, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to special status species will result in the Project continuing to have a significant adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species by the Wildlife Agencies.

Furthermore, the DEIR does not provide an adequate analysis of the potential impacts to migratory patterns or breeding success of birds, nor does it include mitigation for potential impacts. Inadequate avoidance, minimization, and mitigation measures for impacts to migrating or nesting birds will result in the Project continuing to interfere substantially with the movement of native resident or migratory birds or with established migratory corridors or impede the use of native wildlife nursery sites. All the effects mentioned in Comment #3 and this Comment #4 are likely to result in significant effects to individual birds as well as their populations.

Recommended Potentially Feasible Mitigation Measure(s)

Recommendation #4: Flyover Impacts. CDFW recommends that the DEIR include measures to avoid, reduce, and compensate for impacts associated with low-level flyovers. Measures should clearly indicate that they apply to all aspects of the Airshow, including aircraft flight familiarization and flight practice flyovers, and that they apply to all types of aircraft, including parachutes, gliders, and drones. It should also be clear in the DEIR that the measures apply to aircraft involved in photographing the Airshow.

Mitigation Measure #6: Participant Education. The Project proponent shall conduct daily formal pre-flight briefings to familiarize all pilots with the sensitivity of BCER and other coastal wetlands. These briefings shall be held each day of the Airshow, including days with aircraft flight familiarization and flight practice flyovers. The Project proponent shall notify CDFW of all pre-flight meeting times and allow the opportunity for CDFW staff to participate in the meetings. The Project proponent shall coordinate with CDFW each day prior to the meeting in order to have the most current information regarding sensitive resources within BCER.

Mitigation Measure #7: Flight Over BCER. The Project proponent shall encourage pilots to avoid flying over BCER. The Project proponent shall inform participants that coastal wetlands, including BCER, are considered noise-sensitive areas, as that term is

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used in FAA Advisory Circular No: 91-36D⁴. The Project proponent shall encourage pilots to observe the voluntary practices contained therein. In particular, pilots shall be encouraged to maintain an altitude of at least 2,000 feet above ground level when flying over BCER or other coastal wetlands. A copy of the advisory circular shall be included in the participant information package, and it shall be discussed at pre-flight meetings.

Mitigation Measure #8: Post Action Report and Coordination. Within 60 days following the Airshow, the Project proponent shall provide a Post Action Report to the City, the Wildlife Agencies, and other stakeholders. The report shall, at a minimum, summarize the results of the monitoring (see recommended mitigation measure #4 above), any issues that arose during the Airshow and measures that were taken as a result, compensatory measures proposed to offset any impacts (see recommendation #3 above related to compensatory mitigation), and suggested improvements for future Airshows. Upon request, the Project proponent shall meet with the City, the Wildlife Agencies, and/or other stakeholders to discuss the Post Action Report and any proposed additional mitigation measures that would further decrease impacts from future Airshows.

ADDITIONAL COMMENTS

Scope of the Project. While alluded to in other places in our letter, CDFW requests that the scope of the Project be expanded to include, and that all mitigation measures apply to, flight rehearsals leading up to the Airshow. Activities that may have impacts to biological resources post event should also be included.

Bird Strike Hazard. CDFW recommends the City clarify the timing limits of Airshow flights in relationship to bird strikes. Currently, the DEIR says that no flights related to the airshow are planned to occur at night, so, "...the potential for impacts to aircraft from collisions with migratory birds are expected to be less than significant" (page 3.3-11); however, other places in the document say that there will be night flights, potentially as late as 11:00pm (page ES-4). The issue of bird strike with regard to the temporary landing area should also be revisited. The DEIR does not identify the methods that will be used to mitigate bird strike hazards for the temporary runway, but it does indicate hazing could be employed. CEQA requires that if a mitigation measure could, itself, have impacts, those impacts must be disclosed and analyzed in the DEIR (CEQA Guidelines, § 15126.4(a)(1)); therefore, CDFW recommends the DEIR disclose the measures that will be required to mitigate bird strike hazards, analyze the potential impacts to biological resources that could occur as a result of those measures, and include them in a MMRP table. Bird strikes and any bird hazing should be included in the report mentioned in Mitigation Measure #7 in order to develop appropriate compensatory mitigation for the effects to ensure they will be less than significant, either on an individual, specific basis, or from the perspective of a cumulative effect on birds.

⁴ https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/23156

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Results of Bird Behavior Monitoring. CDFW recommends that the City include the data and a discussion of past monitoring efforts, including methodologies and results, in the environmental document to better inform its analysis of the Project's effects on biological resources. This includes data on the behavior of birds in response to aircraft as well as the monitoring that occurred during the 2023 airshow. Mitigation measures based on discussion of this data should be included in an MMRP table.

Mitigation and Monitoring Reporting Plan. CDFW recommends the Project's environmental document include mitigation measures recommended in this letter. CDFW has provided comments via a mitigation monitoring and reporting plan to assist in the development of feasible, specific, detailed (i.e., responsible party, timing, specific actions, location), and fully enforceable mitigation measures (CEQA Guidelines, § 15097; Pub. Resources Code, § 21081.6). The Lead Agency is welcome to coordinate with CDFW to further review and refine the Project's mitigation measures. Per Public Resources Code section 21081.6(a)(1), CDFW has provided a summary of our suggested mitigation measures and recommendations in the form of an attached Draft Mitigation Monitoring and Reporting Plan (Attachment A).

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The [CNDDDB website](https://wildlife.ca.gov/Data/CNDDDB)⁵ provides direction regarding the types of information that should be reported and allows on-line submittal of field survey forms.

In addition, information on special status native plant populations and sensitive natural communities, should be submitted to CDFW's Vegetation Classification and Mapping Program using the [Combined Rapid Assessment and Relevé Form](https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit)⁶. The City should ensure data collected for the preparation of the DEIR is properly submitted.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of environmental document filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the environmental document filing fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

⁵ <https://wildlife.ca.gov/Data/CNDDDB>

⁶ <https://wildlife.ca.gov/Data/VegCAMP/Natural-Communities/Submit>

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CONCLUSION

CDFW appreciates the opportunity to comment on the DEIR to assist the City in identifying and mitigating Project impacts on biological resources. CDFW requests an opportunity to review and comment on any response that the City has to our comments and to receive notification of any forthcoming hearing date(s) for the Project.

Questions regarding this letter or further coordination should be directed to Jennifer Turner⁷, Senior Environmental Scientist Supervisor.

Sincerely,

DocuSigned by:

5991E19EF8094C3...

Victoria Tang
Environmental Program Manager
South Coast Region

ATTACHMENTS

Attachment A: Draft Mitigation, Monitoring, and Reporting Program

ec: California Department of Fish and Wildlife
Victoria Tang
Jennifer Turner
Kelly Fisher
Melissa Borde
Robin Madrid

United States Fish and Wildlife Service
Carol Roberts, carol_a_roberts@fws.gov

California State Lands Commission
Wendy Hall, Wendy.Hall@slc.ca.gov

California Coastal Commission
Amitra Spencer, Amrita.Spencer@coastal.ca.gov

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State.Clearinghouse@opr.ca.gov

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REFERENCES

- Ellenberg, Ursula, Thomas Mattern, and Philip J Seddon. 2013. "Heart Rate Responses Provide an Objective Evaluation of Human Disturbance Stimuli in Breeding Birds." *Conservation Physiology*. doi:10.1093/conphys/cot013.
- Fuller, Allison R, Gerard J McChesney, and Richard T Golightly. 2018. "Aircraft Disturbance to Common Murres (*Uria aalge*) at a Breeding Colony in Central California." *Waterbirds: The International Journal of Waterbird Biology* 257-267.
- Huntington Beach Wetlands Conservancy. 2024. "Activitiy fo the California Least Tern (*Sternula antillarum browni*) at ."
- Jefferson, Camryn N, Marissa M Brown, Lianne M Koczur, Cortney E Weatherby, and Fallan D Batchelor. 2022. "Disturbances to Least Tern (*Sternula antillarum*) Colonies Along the Alabama Coast." *Alabama Birdlife*.
- Kempf, Norbert, and Ommo Hüppop. 1998. "Wie wirken Flugzeuge auf Vögel? - Eine bewertende Übersicht." *Naturschutz und Landschaftsplanung*. Summarized in English online at https://www.fai.org/sites/default/files/documents/ln_3-1_aircraft_effects_on_birds.pdf.
- Powell, Abby N. 2001. "Habitat Characteristics and Nest Success of Snowy Plovers Associated with California Least Tern Colonies." *The Condor*.
- Schummer, Michael L, and William R Eddleman. 2003. "Effects of Disturbance on Activity and Energy Budgets of Migrating Waterbirds in South-Central Oklahoma." *The Journal of Wildlife Management* 789-795.
- Scopel, L C, and A W Diamond. 2017. "Predation and Food-Weather Interactions Drive Colony Collapse in a Managed Metapopulation of Arctic Terns (*Sterna paradisaea*)." *Canadian Journal of Zoology*. doi:<https://doi.org/10.1139/cjz-2016-0281>.
- van der Kolk, H J, C J Smit, A M Allen, B J Ens, and M van de Pol. 2024. "Frequency-dependent Tolerance to Aircraft Disturbance Drastically Predicted Impact on Shorebirds." *Ecology Letters*. doi:10.1111/ele.14452.
- van der Kolk, H, K L Krijgsveld, H Linssen, R Diertens, D Dolman, M Jans, M Frauendorf, B J Ens, and M van de Pol. 2020. "Cumulative Energetic Costs of Military Aircraft, Recreational and Natural Disturbance in Roosting Shorebirds." *Animal Conservation* 359-372. doi:10.1111/acv.12546.

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ATTACHMENT A: DRAFT MITIGATION MONITORING AND REPORTING PROGRAM (MMRP)

CDFW provides the following language to be incorporated into the MMRP for the Project.

Mitigation Measures	Timing	Responsible Party
Mitigation Measure #1: <u>Breeding Season Avoidance</u>. In order to avoid impacts to breeding birds, Airshow activities (including set up and teardown) shall not occur between January 1 and September 15.	During the Project	Project Proponent
Mitigation Measure #2: <u>Nest Site Surveys and Buffers</u>. The Project proponent shall engage a qualified biologist (familiar with nesting shorebirds and possessing all necessary permits) to survey the technical study area for nesting birds. If nests are found, the qualified biologist shall establish a 300-foot buffer for CESA- or ESA-listed species and a 500-foot buffer for Fully Protected species. The buffer shall be between the Airshow activities, including presence of spectators, and the nest site. The buffer shall be delineated with construction fence, and signs shall be posted along the fence informing the public of the sensitive nature of the nesting site and indicating the area should not be entered. A qualified biologist may determine that additional buffer distance is biologically warranted.	During the Project	Project Proponent
Mitigation Measure #3: <u>Nest Site Monitoring</u>. The Project proponent shall monitor nest sites, including those discovered during the nest site survey and those permanently designated as nest sites (western snowy plover and California least tern nesting areas), during the entire run of the Airshow to ensure spectators do not enter nesting areas and trash and debris are not introduced. Trash and debris shall be removed by or at the direction of a qualified biologist.	During the Project	Project Proponent

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Mitigation Measures	Timing	Responsible Party
Mitigation Measure #4: <u>Compensatory Mitigation</u>. The City shall work closely with CDFW and USFWS (collectively, the Wildlife Agencies) and other coastal wetland managers to determine local needs and develop a compensatory mitigation scenario to be included in the DEIR. This mitigation shall be identified in advance of the Airshow to address certain types of effects and then chosen for implementation after the Airshow to specifically address whatever effects that occurred.	Before, during, and after the Project	Project Proponent
Mitigation Measure #5: <u>Monitoring of Bird Behavior</u>. The Project proponent shall engage a qualified biologist (familiar with bird behavior and possessing all necessary permits) to monitor and assess the effects of the Airshow on bird behavior. Monitoring shall occur at BCER, as well as other locations where birds congregate. Monitoring shall include one or more days prior to the start of Airshow activities, to provide a baseline measurement, and shall continue daily until the end of the Airshow. Observations shall be made of bird behaviors and aircraft passing over the study area. The Project proponent shall coordinate with CDFW to develop appropriate study design and methodology.	Before, during, and after the Project	Project Proponent
Mitigation Measure #6: <u>Participant Education</u>. The Project proponent shall conduct daily formal pre-flight briefings to familiarize all pilots with the sensitivity of BCER and other coastal wetlands. These briefings shall be held each day of the Airshow, including days with aircraft flight familiarization and flight practice flyovers. The Project proponent shall notify CDFW of all pre-flight meeting times and allow the opportunity for CDFW staff to participate in the meetings. The Project proponent shall coordinate with CDFW each day prior to the meeting in order to have the most current information regarding sensitive resources within BCER.	During the Project	Project Proponent

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Mitigation Measures	Timing	Responsible Party
Mitigation Measure #7: <u>Flight Over BCER</u>. The Project proponent shall encourage pilots to avoid flying over BCER. The Project proponent shall inform participants that coastal wetlands, including BCER, are considered noise-sensitive areas, as that term is used in FAA Advisory Circular No: 91-36D ⁸ . The Project proponent shall encourage pilots to observe the voluntary practices contained therein. In particular, pilots shall be encouraged to maintain an altitude of at least 2,000 feet above ground level when flying over BCER or other coastal wetlands. A copy of the advisory circular shall be included in the participant information package, and it shall be discussed at pre-flight meetings.		
Mitigation Measure #8: <u>Post Action Report and Coordination</u>. Within 60 days following the Airshow, the Project proponent shall provide a Post Action Report to the City, the Wildlife Agencies, and other stakeholders. The report shall, at a minimum, summarize the results of the monitoring (see recommended mitigation measure #4 above), any issues that arose during the Airshow and measures that were taken as a result, compensatory measures proposed to offset any impacts (see recommendation #3 above related to compensatory mitigation), and suggested improvements for future Airshows. Upon request, the Project proponent shall meet with the City, the Wildlife Agencies, and/or other stakeholders to discuss the Post Action Report and any proposed additional mitigation measures that would further decrease impacts from future Airshows.		

⁸ https://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.information/documentID/23156

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Mitigation Measures	Timing	Responsible Party
Recommendation #1: <u>Revised analysis</u>. CDFW strongly recommends that the City revise its discussion and analysis of impacts to biological resources, and provides mechanisms to enforce all the assumptions outlined above. If the City cannot enforce the assumptions, then the Biological Resources impact analysis should be based on the Project as it would occur without those assumptions in place (e.g., assess impacts associated with the Project occurring during the bird nesting season, assess impacts with aircraft flying over BCER, etc.). This analysis should include compensatory mitigation for significant impacts as appropriate. If the City asserts that the assumptions are enforceable, then the City should provide evidence as to how the assumptions would be enforceable, the assumptions should be rewritten as enforceable mitigation measures, and be included in the DEIR's MMRP table.	Before the Project	The City
Recommendation #2: <u>Breeding Season Avoidance</u>. If the City is able to restrict the timing of future Airshows, CDFW recommends Mitigation Measure #1 (detailed below) be included in the DEIR and its MMRP table. If the City is unable to restrict timing, CDFW recommends the City include Mitigation Measures #2, #3, and #4, detailed below.	Before the Project	The City
Recommendation #3: <u>Compensatory Mitigation</u>. CDFW recommends the DEIR include a range of potential compensatory mitigation options to offset impacts to nesting birds resulting from the Airshow. Options to explore include conservation and/or restoration of nesting habitat; funding for infrastructure work at conserved coastal wetlands to improve water circulation and habitat conditions; and providing funding to managers of California least tern and western snowy plover nesting colonies for ongoing efforts (i.e., fence repair and predator control). CDFW cautions the City that due to the various factors that could affect the resources, working closely with the	Before the Project	The City

Connor Hyland
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Mitigation Measures	Timing	Responsible Party
Wildlife Agencies and other coastal wetland managers is critical to ensuring that the impacts of the Project will be reduced to below a level of significance.		
Recommendation #4: <u>Flyover Impacts</u>. CDFW recommends that the DEIR include measures to avoid, reduce, and compensate for impacts associated with low-level flyovers. Measures should clearly indicate that they apply to all aspects of the Airshow, including aircraft flight familiarization and flight practice flyovers, and that they apply to all types of aircraft, including parachutes, gliders, and drones. It should also be clear in the DEIR that the measures apply to aircraft involved in photographing the Airshow.	Before the Project	The City

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August 22, 2025

File Ref: SCH #2024020006

Lisa Lane Barnes
City Clerk
City of Huntington Beach
2000 Main Street, 2nd Floor
Huntington Beach, CA 92648

Connor Hyland
Senior Deputy Attorney
City of Huntington Beach, Office of the City Attorney
2000 Main Street, Fourth Floor
Huntington Beach, CA 92648

VIA ELECTRONIC MAIL ONLY

(SupplementalComm@Surfcity-hb.org; connor.hyland@surfcity-hb.org)

Subject: Final Environmental Impact Report for the Pacific Airshow Huntington Beach, Orange County

Dear Lisa Lane Barnes and Connor Hyland:

The California State Lands Commission (Commission) staff has reviewed the final Environmental Impact Report (FEIR) and responses to comments for the Pacific Airshow Huntington Beach (Project), which is being prepared by the City of Huntington Beach (City), the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign lands and their accompanying Public Trust resources or uses. Additionally, because the Project involves activities on State sovereign land under the Commission's jurisdiction, the Commission will act as a responsible agency for approval of these activities. This letter provides Commission staff comments and concerns regarding the FEIR, which the Commission will rely upon in amending or issuing a new lease for the Project.

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ADDITIONAL INFORMATION FOR CITY COUNCIL CONSIDERATION

Master Response B: Previous Agency Concerns About the Airshow

In this response, the City states: "Several commentors mentioned a video regarding the "airshow's past harm to wildlife." **The City is not in possession of a video.**" [Emphasis added.] It further states: "There have also been comments in letters submitted by the California State Lands Commission, the California Department of Fish and Wildlife, and Carstens, Black & Minter indicating there have been significant adverse impacts on wildlife and habitat on the Bolsa Chica Wetlands during previous Airshows; however, specific evidence has not been provided as part of this Draft EIR process. Therefore, these comments are noted and included in the Project record. No response is required because the comment neither raises a specific, significant environmental issue nor addresses the contents of the Draft EIR." [Emphasis added.]

"The City is not in possession of a video." - This is a disingenuous statement. The Commission provided videos taken by CDFW staff of loud, low 2021 Airshow overflights causing birds to flush to the City of Huntington Beach in response to a Public Records Act (PRA) request by the City in 2023. Proof of delivery of this evidence to the City is provided in the link in this paragraph, including the Commission's letter in response to the PRA and three separate emails providing the link to the video and photographic evidence referred to in the response letter, including acknowledgement of receipt by the city attorney, Michael Gates. ([2023 City of HB PRA Materials](#))¹ Despite having been provided this evidence, the City, as lead agency, did not include it in the CEQA analysis. Although a lead agency is not required to include all information on an issue, it is required to make a reasonable good faith disclosure. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The selective omission of evidence crucial to analyzing the effects of a project violates CEQA. (*City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 487-488.)

Since 2021 and through 2024, the CDFW on-site management staff at the Bolsa Chica Ecological Reserve have documented the Airshow jet overflight impacts to wildlife by videos and photographs. Staff is including additional video evidence from the 2023 and 2024 Airshows for the City Council's consideration.

¹ Full link: https://caslc-my.sharepoint.com/:f/g/personal/lucinda_calvo_slc_ca_gov/EumgjiMVjuRBGI7d2AIQ9Xh0BIQVp-vSR5mvK0rk8GsHe_AA?e=dSegcC

Lisa Lane Barnes and Connor Hyland

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([2023-2024 Airshow videos link](#))² Staff requests the evidence of impacts from the 2023 and 2024 Airshows in addition to the evidence provided for the 2023 PRA request be considered in the EIR analysis prior to certification so that the lead agency meets the CEQA requirement to "use its best efforts to find out and disclose all that it reasonably can" about the project's impacts, rather than strategically omitting evidence demonstrating those impacts.

(see *People ex rel. Bonta v. County of Lake* (2024) 105 Cal.App.5th 1222, 1233, quoting and discussing CEQA Guidelines, § 15144.)

Analytical and Data Gaps Affecting Responsible Agency Approval

- Staff appreciates the robustness with which the biological monitoring plan is described in Master Response D. The FEIR clearly describes the role and required qualifications of biological monitors, when and where within the Biological Study Area (BSA) biological monitors will be located, what conditions the monitors are there to observe, and actions that may be taken by the monitors (e.g., creating buffers for any nesting special status birds, removal of trash and debris from nest sites or sensitive habitat, and initiating consultation with the City/Applicant to propose an increase in elevation if noticeable changes in behavior of special status species are observed). In addition, the yearly post-Airshow reports will provide transparency to the public and an opportunity to adapt recommendations based on field observations for future Airshows.
- There is a logical gap between finding noise impacts (to humans) to be significant and unavoidable while noise impacts to wildlife are found to be Less Than Significant (LTS), rather than Less Than Significant with Mitigation (LTSM).
 - Specifically, the City has found Noise impacts for the Airshow to be significant and unavoidable. Both aircraft noise and the multi-day music festival would result in exceedances of the City's ambient noise thresholds. In addition, the City found that the music festival would also result in impacts from ground borne vibration and ground borne noise. The mitigation measure proposed to address these impacts, MM NOI-1, focuses on the installation of sound barriers to dampen noise and vibration received by sensitive receptors from the music festival. No mitigation is proposed for aircraft noise. While the City has acknowledged that aircraft noise would contribute a significant and unavoidable impact to humans,

² Full link: https://caslc-my.sharepoint.com/:f/g/personal/lucinda_calvo_slc_ca_gov/EiZpRBUZEK9OnFR7aklWKVYBOwUfgtLoZ0YeV7QaGSKAZw?e=Pka6OI

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August 22, 2025

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the City also found that impacts to biological resources from noise would be less than significant, and in FEIR responses to comments states, "Worth noting, the biological monitoring that occurred from 8:00 am to 4:30 pm during the first two days of the 2023 Airshow (September 29, 2023, and September 30, 2023) did not detect noise-related impacts to sensitive species during flyovers or the presence of nests." Staff believes that the video and photographic evidence discussed in the Additional Information for City Council Consideration (above) provides substantial evidence beyond the 2 days from the 2023 Airshow which should have been used to inform the FEIR analysis of noise impacts to special status species. The available evidence suggests that a potentially significant impact to wildlife should occur if significant and unavoidable impacts were found for humans, particularly since the City has stated in the FEIR (page 3-48) "Wildlife that is more sensitive to human disturbances and noise may be deterred by the Project related activities" and "Sound pollution and repeated overhead flyovers can pose a threat to wildlife or harass wildlife species when they occur directly over an occupied area causing bird populations to take flight each time a plane or low flying aircraft fly over." The potentially significant impact to wildlife could be reduced to LTSM through compensatory mitigation, such as a CDFW incidental take permit which might include funding projects or activities within or near the Bolsa Chica Ecological Reserve to benefit the affected special status species.

- The 2023 Airshow biological monitoring information referenced in the FEIR is included with Master Response D (page 3-7) but was not provided as an appendix or directly incorporated into the Biological Resources Technical Report (Appendix D). Staff requests a copy of this report for our Responsible Agency analysis.
- The FEIR proposes several activities for post-2025 airshows that are either not analyzed in the FEIR or only mentioned in a few resource areas. The nature of the activities would suggest that they would take place below the mean high tide line and in Commission jurisdiction. The following activities are either not included in the FEIR or do not include sufficient detail for the Commission, as a responsible agency, to rely upon the document for issuance of a potential lease. If this information is not included in the certified EIR, then the Commission may need to conduct subsequent environmental review before taking a future discretionary action related to the Project. Alternatively, Commission staff would need to consider specifically excluding these activities from a potential future lease. These activities include:

Lisa Lane Barnes and Connor Hyland

August 22, 2025

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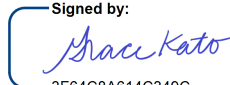
- Pyrotechnic Daily and Nightly Shows: Described in the EIR as “Both daily and nightly shows may be discharged by aircraft, the Huntington Beach Pier, or an ocean barge. Nightly pyrotechnic shows will conclude by 11:00 PM” (page 2-9; 2.6.1 Historic and Future Airshow Activities and Events Schedule). The pyrotechnic/fireworks shows are briefly discussed in Air Quality (Section 3.1) and Noise (Section 3.4) and the EIR states “During the Airshow events, the temporary Airshow pyrotechnic display would occur over water, similar to the City’s annual 4th of July Fireworks Over the Ocean and would not result in permanent effects on the environment”. However, the pyrotechnics/fireworks are proposed to potentially take place over Commission jurisdiction through a variety of proposed methods that are neither fully described in the project description nor analyzed. For example, if an ocean barge were to be used, information such as anchor locations and methods should be known, impacts to biological resources, water quality, and hazards and hazardous materials should also be analyzed and included in the EIR.

Thank you for the opportunity to comment on the FEIR for the Project. As a responsible and trustee agency, the Commission will rely on the Final EIR in amending or issuing a new lease. Staff requests that you consider these comments before certifying the FEIR.

Please send electronic copies of the Final EIR (if revised), Mitigation Monitoring and Reporting Program, Notice of Determination, approving resolution, CEQA Findings, and Statement of Overriding Considerations when they are final.

Refer questions concerning environmental review to Robin Tuohy, Environmental Scientist, at Robin.Tuohy@slc.ca.gov. For questions concerning Commission leasing jurisdiction, please contact Jeffrey Plovnick, Public Land Management Specialist, at Jeffrey.Plovnick@slc.ca.gov.

Sincerely,

Signed by:

3F64C8A614C349C...
GRACE KATO
Acting Executive Officer

cc: Seth Blackmon, Chief Counsel, Commission
Wendy Hall, Special Projects, Commission
Nicole Dobroski, Chief of DESPM, Commission

STATE OF CALIFORNIA

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August 10, 2023

File ref: Lease 6616

Sent via postal and E-Mail (Michael.Gates@surfcity-hb.org)

Michael E. Gates
City Attorney
City of Huntington Beach
2000 Main Street
Huntington Beach, California 92648

SUBJECT: Required Application for an Amendment of Lease PRC 6616, a General Lease – Public Agency Use for the Operation and Maintenance of Huntington Beach Pier

Dear Mr. Gates:

Our records indicate that that the City has permitted an operator for an event known as the Huntington Beach Pacific Airshow that will occur in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity constitutes an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights.

As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City of Huntington Beach (City) for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff has become aware that a proposed event, the Huntington Beach Pacific Airshow, will utilize the Pier.

Based on the information available, the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights

City of Huntington Beach

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between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier will be closed to the general public on all three days of the event and that the event operator will only allow access to the Pier through the purchase of a ticket sold by a private vendor. The event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating will also be restricted, during the event is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission.

As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease:

"Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present."

The closure of the Pier to the general public requires Commission authorization through the form of an amendment to the lease. An application for a lease amendment is urgently required for the proposed event.

The lease application is available online through our website at <https://www.slc.ca.gov/leases-permits/>. A video is available to assist you in completing the application process. We encourage the City to complete and submit an application as soon as possible. The Online Application will require the City to provide the following (at a minimum):

- Copies of all currently approved or in process permits for the event with the City of Huntington Beach, United States Coast Guard, California Coastal Commission, and California Department of Fish and Wildlife.
- A description of the closure, impacts, and timeline of the event.
- Photos or diagrams showing where the closure of the pier begins.

City of Huntington Beach

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We request your cooperation in this matter and urge the City to submit a lease application immediately or contact our office for a meeting to discuss. If you have any questions, please contact either Ken Foster at (916) 574-2555 or by email at kenneth.foster@slc.ca.gov or Kelly Connor at (916) 574-0343 or by email at kelly.connor@slc.ca.gov.

Sincerely,

DocuSigned by:

D4AAC71802234D2

Seth Blackmon

Chief Counsel, Legal Division

cc: Al Zelinka, City Manager, City of Huntington Beach
Warren Crunk, CSLC Legal Division
Lucinda Calvo, CSLC Legal Division
Ken Foster, CSLC Land Management Division
Kelly Connor, CSLC Land Management Division



CITY OF HUNTINGTON BEACH
OFFICE
of the
CITY ATTORNEY

Michael E. Gates
City Attorney

P.O. Box 190
2000 Main Street
Huntington Beach, California 92648
Telephone: (714) 536-5555
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Nadin S. Said
Sr. Deputy City Attorney

Ryan E. Lumm
Sr. Deputy City Attorney

Lauren L. Rose
Deputy City Attorney

Charles "Connor" Hyland
Deputy City Attorney

Steven F. Pomeroy
Community Prosecutor

August 18, 2023

Mr. Seth Blackmon, Chief Counsel
California State Lands Commission
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

Re: Required Application for an Amendment of Lease PRC 6616, a General Lease – Public Agency Use for the Operation and Maintenance of Huntington Beach Pier

Please allow this letter to respond to your letter of August 10, 2023 regarding Lease PRC 6616. Your letter raises several concerns about the proposed Huntington Beach Pacific Airshow ("Event"). Your concerns are noted and below is a response to each of your assertions.

1. You wrote: *"Our records indicate that that the City has permitted an operator for an event known as the Huntington Beach Pacific Airshow that will occur in and around the Pacific Ocean, near and on the Huntington Beach Pier. This is to advise you that the proposed activity constitutes an unauthorized use of State land, under the jurisdiction of the California State Lands Commission (Commission), well outside of the City's current lease rights."*

In response, the City has received an application for a Specific Events Permit under the provisions of the City's Municipal Code; although no permit has been issued. The application is currently under review by City staff. This type of permit is *ministerial* in nature, i.e., "over-the-counter" as long as certain conditions are met, and does not require CEQA review. CEQA applies to discretionary projects approved by public agencies, but does not apply to ministerial projects. (Pub. Resources Code, § 21080; *Day v. City of Glendale* (1975) 51 Cal.App.3d 817, 820). As ministerial, the City is not involved in the conceptual development and approvals of the project, which would include discretionary approvals by the Planning Commission and/or City Council. As ministerial, the proposed project is simply presented pursuant to the Specific Events Permit.

As you may be aware, ministerial projects involve little personal judgement by the public agency about the project as to the “wisdom or manner of carrying out of the project.” (*Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 489; Cal. Code Regs., tit. 14 § 15369.) The Court of Appeal has held projects are ministerial and not subject to CEQA when discretionary elements in an ordinance did not confer the authority to mitigate the environmental impacts of a project in a meaningful way. (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 23.)

In addition, the City’s permit, if issued, will only authorize activity on property under the City’s jurisdiction and control and will not authorize activity on the Lease Premises as described in the Lease.

2. You wrote: *“As a reminder, the Commission authorized Lease PRC 6616, a General Lease – Public Agency Use, to the City of Huntington Beach (City) for the operation and maintenance of an existing public municipal pier (Huntington Beach Pier or Pier) and related concessions. That lease was authorized for a term of 25 years, beginning June 21, 2018. Staff has become aware that a proposed event, the Huntington Beach Pacific Airshow, will utilize the Pier.”*

In response, although the application requests to use a portion of the City’s Municipal Pier, the portion that is proposed to be utilized during the Event is above dry land, inland of the mean high tide line, and not a part of the Lease Premises as described in Lease PRC 6616.

To be very clear, upon a plain read of Exhibit A, Land Description of Lease PRC 6616.1, pgs. 1 and 2, the leased property does not include the City’s Municipal Pier. Rather, the Land Description (as depicted graphically in addition to the text description) shows the subject of the leased property is a defined region of the natural ocean water and natural land within the description – not the City’s Municipal Pier (“Pier”).

3. You wrote: *“Based on the information available, the proposed event will occur for three days, from September 29th through October 1st, will have airshow flights between 10:30 am to 4:30 pm, and a festival near the Huntington Beach Pier on all three days until 8:00 pm. Additionally, staff understands that the public Pier will be closed to the general public on all three days of the event and that the event operator will only allow access to the Pier through the purchase of a ticket sold by a private vendor.”*

In response, the exact hours of the proposed Event is still under review. Without agreeing that the Pier is a subject of the Lease Premises in Lease PRP 6616, the applicant has proposed a ticketed seating area on the Pier, inland of the mean high tide line, within the City’s certified LCP area. Any potential City permit will only be effective on the

beach and Pier within the City's certified LCP area, including any festival or other activity. The entire Pier will not be closed to the public during the Event, nor will tickets be required to access the Pier, although public safety concerns may potentially require brief closure of the entire Pier for limited amounts of time during the Event. Such brief closures are contemplated by the Lease, are not unusual, and are occasionally required for the protection of the public's health, safety and welfare.

4. You wrote: *"The event requires temporary placement of 16 large white buoys along a 12,000-foot line 500 feet offshore, as well as other buoys marking a "sterile aerobatic box" area, within the Commission's jurisdiction. This degree of restriction on public access and recreation along the beach and in the ocean, where boating will also be restricted, during the event is not authorized by the City's lease. The lands waterward of the ordinary high-water mark remain ungranted sovereign lands under the management of the Commission."*

In response, the "sterile aerobatic box" area you described is not within the area contemplated by the City's proposed Specific Events Permit, which is limited to dry land owned or operated by the City; nor is it within the Lease Premises. The City does not purport to have authority to permit the establishment of such a "sterile aerobatic box" as part of the proposed Specific Events Permit. In fact, the establishment of the "sterile aerobatic box" is driven by the Federal Aviation Administration and beyond the control of the City.

The Specific Events Permit, if issued, will require the applicant to seek any other required permits from other government agencies, including any required by the Federal Aviation Administration. The applicant will also be required to maintain public access to the Lease Premises, and the Event will not unreasonably limit public access to the Lease Premises, if at all.

5. You wrote: *"As a reminder, the City's lease acknowledges that the Premises are subject to the Public Trust and are available to members of the public. Per Section 2, Paragraph 3 of the lease: "Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present." The closure of the Pier to the general public requires Commission authorization through the form of an amendment to the lease. An*

Re: Required Application for an Amendment of Lease PRC 6616

August 18, 2023

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application for a lease amendment is urgently required for the proposed event."

In response, as stated above, the Lease Premises as described in the Lease is not a part of the proposed Special Event Permit. The City will continue at all times to comply with the terms of the Lease regarding public access to the Lease Premises. Accordingly, an application for a Lease Amendment is not required, and the City does not intend to submit such an application.

Please contact me at your earliest convenience if you have any further comments or questions.

Sincerely,



Michael E. Gates
City Attorney

MG:mh

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
California State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
OFFICIAL BUSINESS
Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.
County: Orange

LEASE NO. PRC 6616.1

This Lease consists of this summary and the following attached and incorporated parts:

Section 1	Basic Provisions
Section 2	Special Provisions Amending or Supplementing Section 1 or 3
Section 3	General Provisions
Exhibit A	Land Description
Exhibit B	Site and Location Map
Exhibits C1-C6	Sublease Endorsements
Exhibit D	Lease Maintenance Reimbursement Agreement

SECTION 1

BASIC PROVISIONS

THE STATE OF CALIFORNIA, hereinafter referred to as Lessor acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (100 Howe Avenue, Suite 100-South, Sacramento, California 95825-8202), pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to **CITY OF HUNTINGTON BEACH**, hereinafter referred to as Lessee, those certain lands described in Exhibit A hereinafter referred to as Lease Premises, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: 2000 Main Street
Huntington Beach, CA 92648

LEASE TYPE: Public Agency Use

LAND TYPE: Sovereign

LOCATION: Sovereign land in the Pacific Ocean, offshore Huntington Beach, Orange County, as described in Exhibit A attached and by this reference made a part hereof.

LAND USE OR PURPOSE: The operation and maintenance of an existing public municipal pier and related concessions.

TERM: 25 years; beginning June 21, 2018; ending June 20, 2043, unless sooner terminated as provided under this Lease.

CONSIDERATION: \$125 per year, with additional consideration being the public's use and benefit. Subject to modification by Lessor as specified in Paragraph 11 (b) and (c) of Section 2 – Special Provisions; and Paragraph 3(c) of Section 3 - General Provisions.

AUTHORIZED IMPROVEMENTS:

X **EXISTING:** Municipal pier and related concessions

LIABILITY INSURANCE: N/A

SURETY BOND OR OTHER SECURITY: N/A

**SECTION 2
SPECIAL PROVISIONS**

**BEFORE THE EXECUTION OF THIS LEASE, ITS PROVISIONS ARE AMENDED,
REVISED, OR SUPPLEMENTED AS FOLLOWS:**

1. All future structural modifications or material changes to any of the Authorized Improvements, other than future routine repairs and maintenance, will require Commission staff's review and approval prior to commencement of construction. In the event of an urgent repair requiring immediate action, notification shall be made through Lessor's 24-hour emergency response number at (562) 590-5201.

2. Lessee acknowledges and agrees:
 - a. The site may be subject to hazards from natural geophysical phenomena including, but not limited to, waves, storm waves, tsunamis, earthquakes, erosion, flooding, and sea-level rise ("climate change

effects”). The risks posed to the site from these discrete processes, and the combined, additive impacts of multiple processes are anticipated to increase in severity over the term of the lease due to the localized effects of climate change. Specifically, climate change effects could expose the public beach and pier infrastructure, to stronger and prolonged flooding events, requiring maintenance and repair beyond what is regularly needed. Adverse impacts from climate change effects on facilities within the lease area, could result in degradation of Public Trust resources and values, including water quality, recreation, and public safety. Future conditions may necessitate additional adaptation measures to increase the resiliency of the lease area to the impacts of sea-level rise and coastal climate change processes.

- b. To assume the risks to the Lessee and to the property that is the subject of any Coastal Development Permit that is issued to Lessee for development on the Lease Premises, of injury and damage from such hazards in connection with the permitted development and use.
 - c. To unconditionally waive any claim or damage or liability against the State of California, its agencies, officers, agents, and employees for injury or damage from such hazards.
- 3. Lessee acknowledges that the Lease Premises are subject to the Public Trust and are presently available to members of the public for recreation, waterborne commerce, navigation, fisheries, open space, and any other recognized Public Trust uses. Lessee also agrees that any proposed construction activities and subsequent use of the Lease Premises shall not unreasonably interfere with or limit Public Trust rights and shall do so only to the extent necessary to protect public health and safety during construction activities authorized by Lessor, or when imminent threats to public health and safety are present.
 - 4. Lessee shall provide Lessor with a copy of the updated Local Hazard Mitigation Plan (public draft circulated in March 2017) after its approval by Federal Emergency Management Agency (FEMA) and adoption by the City of Huntington Beach. Lessee shall provide Lessor with copies of any subsequent updates to the Local Hazard Mitigation Plan by January 1 of year following such update.
 - 5. Lessee shall conduct structural and utility safety assessment inspection reports, as specified in this paragraph, during the lease term for the improvements in compliance with the American Society of Civil Engineers (ASCE), Manuals of Practice (MOP) 130 – Waterfront Facilities Inspection and Assessment, and the ASCE Standard Practice Manual 101-for Underwater Investigations. Lessee shall provide a copy of the inspection reports, including any necessary remedial action plan, to Lessor’s staff for review and comment. The next inspection shall be conducted on or before December 31, 2020, and Lessee shall submit a report to Lessor within 30 days of inspection completion. Subsequent inspections and reports shall be due every five years in accordance with the same schedule and timing.
 - 6. Lessee shall provide Lessor with an annual summary report on or before each Lease anniversary date (June 21), or a date to be mutually agreed to by Lessee and Lessor’s staff. The report shall include any local monitoring information required by Lessee or other agencies or entities which relates to sea-level rise vulnerability and adaptation capacity of the Lease Premises and the facilities therein. Information shall include but is not limited to: sea-level rise and flooding vulnerability and risk assessments, updates or amendments to the Local Coastal Program, annual flooding frequency and extent, time and duration of any pier closures resulting from flooding, wave overtopping, or storm related damage, annual site photographs, schedule and nature of repair and maintenance operations, and coastal hazard remediation and removal. Pertinent information may be sourced from the Lessee itself or any other research conducted within the Lease Premises or adjacent land.

7. Lessee shall execute a reimbursement agreement with Lessor, substantially in the form as shown in Exhibit D (attached and by this reference made a part hereof), to pay for all reasonable costs and expenditures paid or incurred by the Lessor, its staff or both for review and approval of any plan or related materials required herein, including but not limited to any review or preparation of reports, documents or other actions pursuant to the California Environmental Quality Act (CEQA), plan reviews, and/or amendments. Payment by Lessee shall be in a form and manner which is determined by Lessor's staff and is consistent with the requirement of State law.
8. Lessor acknowledges that the Huntington Beach Municipal Pier is registered with U.S. National Registry of Historic Places. Therefore, notwithstanding Section 3, Paragraph 13 of this Lease, Lessee may be relieved of its obligation to remove the pier under expiration or sooner termination of this Lease, subject to the following conditions: a) the pier and all appurtenant structures are free of any liens or encumbrances; b) the pier and all appurtenant structures have undergone an above and below water inspection as specified in Section 2, Paragraph 5 of this lease; and the inspection report deems the pier and appurtenant structures to be in sound structural and safe condition with no significant defects; c) upon staff's review and concurrence of the structural inspection reports findings, the Commission at its sole discretion accepts a good and sufficient quitclaim deed for the pier and appurtenant structures from Lessee. If Lessee is released from the removal obligations pursuant to this paragraph, Lessee's insurance, indemnity, and liability obligations shall survive the expiration or early termination of this Lease, until such time, that a new operator or tenant is found for the Pier.
9. Five years prior to the expiration of this Lease, Lessee shall submit to Lessor a summary report that details resiliency planning efforts and adaptation strategies related to sea-level rise impacts within the Lease Premises. The report shall include a record of flood frequency and extent, and protective measures taken to reduce flood risk to public and visitor serving facilities within the Lease Premises and upland property. Findings from the utility safety assessment inspection report for the Huntington Beach Pier will also be summarized in the report as well as any emergency repairs made to structures located in the Lease Premises. The contents of this report shall contain sufficient detail to enable Lessor and Lessee to assess the effectiveness of these planning efforts in maintaining and enhancing the resiliency of Public Trust resources and values within the Lease Premises subject to the risks associated with sea-level rise and climate change.
10. Lessor acknowledges and agrees:
 - a. By way of the Sublease Endorsement Exhibits C1 through C6, attached and by this reference made a part hereof, Lessor approves the existing subleases between Lessee and the operators of the existing concessions on the Lease Premises, provided that the sublessees shall name the State of California as an additional insured insofar as their operations within the Lease Premises are concerned for all liability insurance coverage required under their respective sublease agreements.
 - b. Any sublease approved by Lessor Pursuant to Subparagraph 9(a) shall be an exception to Section 3, Subparagraph 5(h) of this Lease, and to the extent commercial use of the Lease Premises is contemplated by such sublease, Lessor agrees that such commercial use shall not constitute a Default of the Lease.
11. Lessee acknowledges and agrees:

- a. Prior to the execution of any subsequent sublease agreement involving the lease facilities, including but not limited to the renewal or extension of any existing subleases described in Paragraph 9 herein, Lessee shall provide Lessor with copies of the sublease agreement for review and approval. The subleases shall confer no rights to the sublessees that extend beyond the terms of this lease, and in no event shall the expiration term of any sublease extend beyond that of this Lease.
- b. On September 30th of each year Lessee shall provide Lessor with an annual report showing whether expenses for the operation and maintenance of the Lease Premises exceeded the income generated thereon in the preceding fiscal year. Lessee shall pay rent for any fiscal year in which the amount of income generated exceeds expenses for operation and maintenance of the Lease premises. The monetary rent shall be one half (50%) of the income generated that exceeds the expenses for operation and maintenance within the fiscal year. Lessee shall include the rental payment as prescribed above when submitting an annual report covering a fiscal year in which monetary rent is due.
- c. Lessee's "income" for purposes of determining rent under this lease shall not include any income tax. "Expenses" shall include direct costs and indirect costs, including administrative expenses and payment of bond and loan obligations. All such indirect costs shall be attributable to the operation and maintenance of the Lease Premises.

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SECTION 3

GENERAL PROVISIONS

1. GENERAL

In the case of any conflict between these General Provisions and Special Provisions found in Section 2, the Special Provisions control.

2. DEFINITIONS

For the purposes of this Lease, the following terms shall be defined as stated below:

“Additions” shall be defined as any use or Improvements other than those expressly authorized in this Lease.

“Alterations” shall be defined as any material change in the size, scope, density, type, nature, or intensity of Improvements on the Lease Premises from what is authorized in this Lease. Alterations shall also include any modifications, alterations, or renovations of the land or waterways on the Lease Premises other than those authorized by this Lease.

“Breach” shall be defined as a party's unjustified or unexcused nonperformance of a contractual duty the party is required to immediately perform.

“Damages” shall include all liabilities, demands, claims, actions or causes of action whether regulatory, legislative or judicial in nature; all assessments, levies, losses, fines, penalties, damages, costs and expenses, including, without limitation: (i) reasonable attorneys', accountants', investigators', and experts' fees and expenses sustained or incurred in connection with the defense or investigation of any such liability, and (ii) costs and expenses incurred to bring the Lease Premises into compliance with Environmental Laws, a court order, or applicable provisions of a Regulatory Agency. The term “Damages” also includes, expressly, those Damages that arise as a result of strict liability, whether arising under Environmental Laws or otherwise.

“Default” shall be defined as a material Breach of magnitude sufficient to justify termination of the Lease.

“Environmental Law” shall be defined as and include all federal, state, and local environmental, health, and safety laws, statutes, ordinances, regulations, rules, judgments, orders, and notice requirements, which were in effect as of the date of execution of this Lease or are subsequently enacted and lawfully applied hereto, which regulate or relate to (a) the protection or clean-up of the environment; (b) the use, treatment, storage, transportation, handling or disposal of hazardous, toxic or otherwise dangerous substances, wastes or materials; (c) the quality of the air and the discharge of airborne wastes, gases, particles, or other emissions; (d) the preservation or protection of waterways, groundwater, or drinking water; (e) the health and safety of persons or property; or (f) impose liability with respect to any of the foregoing, including without limitation, the California Environmental Quality Act (CEQA) [PRC §§ 21000 et seq.]; the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 USCS §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS §§ 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS §§ 6901 et seq.]; the Clean Air Act [42 USCS §§ 7401 et seq.]; the Safe Drinking Water Act [42 USCS §§ 300f et seq.]; the Solid Waste Disposal Act [42 USCS §§ 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS §§ 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS §§ 11001 et seq.]; the Occupational Safety and Health Act [29 USCS §§ 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C §§ 25280 et seq.]; the California Hazardous Substances Account Act [H & S C §§ 25300 et seq.]; the California Hazardous Waste Control Act [H & S C §§ 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C §§ 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water C §§ 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above.

“Hazardous Material” shall be defined as and include any substance which falls within the definition of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, pollutant, or contaminant, under any Environmental Law.

"Improvements" shall be defined as any modification, alteration, addition, or removal of any material, and any other action which serves to change the condition of the Lease Premises from the natural state whether situated above, on, or under the Lease Premises. Improvements include, but are not limited to buildings, structures, facilities, decks, docks, wharves, piers, walks, curbs, bridges, buoys, landscaping, roadways, shoreline protective structures of all types, foundations, pilings or similar support structures whether above or below the water line, fences, utilities, pipelines, and any other construction of any type situated on the Lease Premises.

"Lease" shall be defined as this lease contract together with all amendments and exhibits.

"Lease Premises" shall be defined as the area of land, together with any improvements located thereon, the use and occupancy of which is authorized by this Lease.

"Lessor" shall be defined as the state of California, acting by and through the California State Lands Commission, including the Commissioners, their alternates and designates, the Executive Officer, and the staff of the California State Lands Commission.

"Regulatory Agency" shall include any Federal, State, County, Municipal, or Local agency having jurisdiction over the Lease Premises.

"Repairs" shall be defined as all work of any kind made to maintain, change, restore, strengthen, replace, alter, or otherwise affect any Improvement on the Lease Premises.

"Residence" shall be defined as any Improvement, whether permanent, movable, or temporary, or a portion thereof, which is for the time being a home or place of lodging. A Residence includes any Improvement affixed to the land such as trailers or cabins, built on a raised foundation such as stilts or pilings, and floating residences such as boats, barges, arks, and houseboats, and any combination of such Improvements which provide residential accommodations to the Lessee or others. "Residence" shall not include transitory, intermittent, recreational use of facilities such as campgrounds.

"Residential Use" shall be defined as Improvements such as, but not limited to, sundecks, and sunrooms which are extensions of, or additions to, the upland property and are not water-dependent uses. Although the various uses or Improvements which may fall under this definition may vary by geographic area, lease type, or other factors, it is the intention of the parties to include in this definition all uses and Improvements which are not water-dependent but residential in nature, or those uses and Improvements which are not consistent with common law public trust principles and values.

3. CONSIDERATION

(a) Absolute Triple Net Lease

This Lease is an absolute triple net lease, pursuant to which Lessor has no obligation with respect to the payment of taxes, insurance, the cost of maintenance, utilities and repairs or other costs or obligations associated with the Leased Premises, except as expressly stated herein.

(b) Rent

Lessee agrees to pay Lessor rent as stated in this Lease, in annual installments, for the use and occupancy of the Lease Premises. The first installment shall be due on or before the beginning date of this Lease and all subsequent installments shall be due on or before each anniversary of its beginning date during each year of the Lease term, or as otherwise provided in this Lease. Said sums shall be paid in lawful money of the United States of America. Lessee shall send said rent to the mailing address of Lessor. Timeliness of receipt of remittances sent by mail shall be governed by the postmark date as stated in Government Code Section 11002. Invoices for rent due may be provided by Lessor as a courtesy. Lessor's failure to, or delinquency in, providing invoices shall neither excuse Lessee from paying rent, nor extend the time for paying rent.

(c) Modification

Lessor may modify the method, amount, or rate of consideration effective on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary, without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary of the

beginning date. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides a greater notice period.

If the consideration for this Lease is based on a percentage of income, royalties, profits, or any similar business performance indicators, Lessee shall provide Lessor with financial statements and all other documents necessary to determine the relevant basis for income.

(d) Penalty and Interest

Any installments of rent accruing under this Lease not paid when due shall be subject to a delinquency charge equal to five percent (5%) of the principal sum due. Annual payments shall bear interest as specified in Public Resources Code Section 6224 and the Lessor's then existing administrative regulations governing penalty and interest.

(e) Non-Monetary Consideration

If the consideration to Lessor for this Lease is the public use, benefit, health, or safety, Lessor shall have the right to review such consideration at any time and set a monetary rental if the Lessor, at its sole discretion, determines that such action is in the best interest of the State. Lessee's assignment or transfer of this Lease pursuant to Section 3 Paragraph 11 below to any third party which results in royalties, profits, or any form of compensation, whether monetary or otherwise, shall give Lessor the right to reevaluate the requirements of this Lease as stated in Section 3 Paragraph 11. Lessee shall be given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the rent modification is considered, or thirty (30) days' notice prior to the effective date that this Lease is converted to a monetary rental, whichever provides more notice.

(f) Place for Payment of Rent

All rent that becomes due and payable under this Lease shall be paid to Lessor in person or by United States mail at the Sacramento Offices of the California State Lands Commission, currently at 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825-8202, or at any other place or places that Lessor may designate by written notice to Lessee. Alternately, Lessee may contact Lessor's accounting department for Lessor's current practices for payment by credit card or electronic fund transfer.

4. BOUNDARIES

This Lease is not intended to establish the State's boundaries and is made without prejudice to either party regarding any boundary or title claims which may be asserted presently or in the future.

5. LAND USE

(a) General

(1) Lessee shall use the Lease Premises only for the purpose or purposes stated in this Lease and only for the operation and maintenance of the Improvements expressly authorized in this Lease. Lessee shall commence use of the Lease Premises within ninety (90) days of the beginning date of this Lease or within ninety (90) days of the date set for construction to commence as set forth in this Lease, whichever is later.

(2) All demolition, construction, remodeling, reconstruction, maintenance, repairs, removal, or remediation performed on the Lease Premises at any time by Lessee shall first be authorized by all appropriate Regulatory Agencies. Lessee is solely responsible for determining what approvals, authorizations, or certifications are required, and shall be solely responsible for all costs incurred thereby. In addition, Lessee shall obtain and comply with preventative or remedial measures required by any environmental reports, assessments, or inspections, including, but not limited to those required by the California Environmental Quality Act and/or the National Environmental Policy Act, or as otherwise required by law or reasonably requested by Lessor. Nothing in this Lease shall be interpreted as a pre-approval of any permit, certification, or any other precondition required for the use of the Lease Premises.

(b) Continuous Use

Lessee's use of the Lease Premises shall be continuous from commencement of the Lease until its expiration. Lessee's discontinuance of such use for a period of ninety (90) days shall be presumed to be an abandonment unless Lessee demonstrates to Lessor's satisfaction that Lessee's use of the Lease Premises is consistent with similarly situated properties. In the event of an abandonment, Lessor may elect to terminate the Lease as

provided in Paragraph 12(a)(3). Abandonment of the Lease Premises shall not relieve Lessee of any obligations under this Lease.

(c) Repairs and Maintenance

(1) Lessor shall not be required to make any Repairs in, on, or about all or part of the Lease Premises. Lessee shall, at all times during the term of this Lease and without any cost or expense to Lessor, keep and maintain the Lease Premises, including all Improvements, in good order and repair and in a clean, safe, sanitary, and orderly condition.

(2) Lessee shall make, or cause to be made, any Repairs which may be required by any Regulatory Agency. Lessee shall observe and comply with, any law, statute, ordinance, plan, regulation, resolution, or policy applicable to the Lease Premises in making such Repairs. All work shall be performed with reasonable diligence, completed within a reasonable time, and performed at the sole cost and expense of Lessee.

(3) Lessee expressly accepts the Lease Premises "as is" and expressly acknowledges that:

(i) Lessor has made no representations or warranties as to the suitability of the Lease Premises for any Improvements. Lessee shall conduct all tests necessary to determine the suitability of the Lease Premises for any proposed use or Improvements authorized; and

(ii) Lessor has made no representations or warranties as to the quality or value of any Improvements found on the Lease Premises, or of their conformity to any applicable building codes, zoning ordinances, or other regulations. Lessee agrees to inspect any preexisting Improvements at its own cost to determine whether such Improvements are safe and suitable for the Lessee's intended use; and

(iii) Lessee shall neither be entitled to any reduction in rent, nor any extension of the terms of this Lease because of damage to or destruction of any Improvements on the Lease Premises.

(iv) Lessee and Lessor agree that any Improvements on the Lease Premises constitute the personal property of Lessee and that fixture law does not apply.

(4) In the event that the Lease Premises is partly, or in whole, comprised of tidal, submerged, or waterfront property, Lessee expressly accepts the hazards involved in using or improving such lands. Lessor is not responsible for, and Lessee shall not be reimbursed for nor receive any offset of rent for, any damages or reduced use of the Lease Premises caused by: local or invasive flora or fauna, flooding, erosion, sea level rise, storms, freezing, inclement weather of any kind, acts of god, maintenance or failure of protective structures, and any other such hazards.

(d) Additions, Alterations, and Removal

No Improvements other than those expressly authorized in this Lease shall be constructed by the Lessee on the Lease Premises without the prior written consent of Lessor. Any Additions or Alterations are expressly prohibited. Lessee is also prohibited from any Additions or Alterations which cause a material change to the environmental impact on or around the Lease Premises.

(e) Enjoyment

This Lease is non-exclusive, and is subject to the provisions of Section 3, Paragraph 6 below. Lessee shall have the right to exclude persons from the Lease Premises only when their presence or activity constitutes a material interference with Lessee's use and enjoyment of the Lease Premises.

(f) Discrimination

Lessee, in its use of the Lease Premises, shall not discriminate against any person or class of persons on any basis protected by federal, state, or local law, including: race, color, creed, religion, national origin, sex, sexual orientation, gender identity, age, marital/parental status, veteran status, or disability.

(g) Residential Use

Unless otherwise provided for in this Lease, no portion of the Lease Premises shall be used as a location for a Residence, for the purpose of mooring or maintaining a structure which is used as a Residence, or for Residential Uses.

(h) Commercial Use

Unless otherwise provided for in this Lease, the Lease Premises is to be used by Lessee and Lessee's invitees or guests only. Use of the Lease Premises for commercial purposes; conducting a business, whether for profit or otherwise; and any subleasing, rental, or any transaction whereby Lessee directly or indirectly receives compensation from a third party in exchange for use of the Lease Premises shall constitute an immediate Default of this lease with no cure period.

6. RESERVATIONS, ENCUMBRANCES, AND RIGHTS-OF-WAY

(a) Reservations

(1) Lessor expressly reserves all natural resources in or on the Lease Premises, including but not limited to timber, minerals, and geothermal resources as defined under Public Resources Code sections 6401, 6407, and 6903, respectively; the right to grant and transfer the same; as well as the right to grant leases in and over the Lease Premises which may be necessary or convenient for the extraction of such natural resources. Such leasing shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(2) Lessor expressly reserves a right to go on the Lease Premises and all Improvements for any purposes associated with this Lease or for carrying out any function required by law, or the rules, regulations, or management policies of the State Lands Commission. Lessor shall have a right of reasonable access to the Lease Premises across Lessee owned or occupied lands adjacent to the Lease Premises for any purpose associated with this Lease.

(3) Lessor expressly reserves to the public an easement for convenient access across the Lease Premises to other State-owned lands located near or adjacent to the Lease Premises and a right of reasonable passage across and along any right-of-way granted by this Lease; however, such easement or right-of-way shall be neither inconsistent nor incompatible with the rights or privileges of Lessee under this Lease.

(4) Lessor expressly reserves the right to lease, convey, or encumber the Lease Premises, in whole or in part, during the Lease term for any purpose not inconsistent or incompatible with the rights or privileges of Lessee under this Lease.

(b) Encumbrances

The Lease Premises may be subject to pre-existing contracts, leases, licenses, easements, encumbrances, and claims and is made without warranty by Lessor of title, condition, or fitness of the land for the stated or intended purpose.

7. RULES, REGULATIONS, AND TAXES

(a) Lessee shall comply with and be bound by all presently existing or subsequently enacted rules, regulations, statutes or ordinances of the State Lands Commission or any Regulatory Agency. Occupancy or use of the Lease Premises provides no exemption from applicable regulations including, but not limited to, federal, state, county and local regulations, regulations promoting public health, safety, or welfare, building codes, zoning ordinances, and sanitation regulations. Lessee expressly acknowledges that Regulatory Agencies have jurisdiction over the Lease Premises unless such laws are in direct conflict with state law or public trust principles.

(b) Lessee understands and agrees that a necessary condition for the granting and continued existence of this Lease is that Lessee obtains and maintains all permits or other entitlements. Lessee expressly acknowledges that issuance of this Lease does not substitute for, or provide preference in obtaining authorizations from other Regulatory Agencies.

(c) Taxes

(1) In addition to the rent due under this Lease, Lessee accepts responsibility for and shall pay any and all real and personal property taxes, including possessory interest taxes, assessments, special assessments, user fees, service charges, and other charges of any description levied, imposed on, assessed, or associated with the leasehold interest, Improvements on the Lease Premises, any business or activity occurring on the Lease Premises, the Lease Premises itself, or any portion thereof, levied by any governmental agency or entity. Such payment shall not reduce rent due Lessor under this Lease and Lessor shall have no liability for such payment.

(2) In the event that this Lease commences, terminates or expires during a tax year, Lessee shall pay the taxes for the period of such year during which this Lease was in effect.

(3) Any and all taxes and assessments and installments of taxes and assessments required to be paid by Lessee under this Lease shall be paid when due and the official and original receipt for the payment of such tax, assessment, or installment shall be delivered to Lessor upon request.

(4) Lessee shall indemnify and hold Lessor, the Lease Premises, and any Improvements now or hereafter located thereon, free and harmless from any liability, loss, or Damages resulting from any taxes, assessments, or other charges required by this Lease to be paid by Lessee and from all interest, penalties, and other sums imposed thereon and from any sales or other proceedings to enforce collection of any such taxes, assessments, or other charges.

8. INDEMNITY

(a) Lessee's use of the Lease Premises and any Improvements thereon is at Lessee's sole and exclusive risk.

(b) In addition to any other obligation to indemnify Lessor as otherwise provided in this Lease, except to the extent caused by the sole negligence and/or willful misconduct of the Lessor, Lessee shall indemnify, hold harmless, and, at the option of Lessor, defend Lessor, its officers, agents, and employees from any and all Damages resulting from Lessee's occupation and use of the Lease Premises. Lessee shall reimburse Lessor in full for all reasonable costs and attorneys' fees, specifically including, without limitation, any Damages arising by reason of: (1) The issuance, enjoyment, interpretation, Breach, or Default of this Lease; (2) The challenge to or defense of any environmental review upon which the issuance of this Lease is based; (3) The death or injury of any person, or damage to or destruction of any property from any cause whatever in any way connected with the Lease Premises, or with any of the Improvements or personal property on the Lease Premises; (4) The condition of the Lease Premises, or Improvements on the Lease Premises; (5) An act or omission on the Lease Premises by Lessee or any person in, on, or about the Lease Premises; (6) Any work performed on the Lease Premises or material furnished to the Lease Premises; (7) Lessee's failure to comply with any material legal or other requirement validly imposed on Lessee or the Lease Premises by a Regulatory Agency.

(c) The reimbursement provisions of this Paragraph 8 shall not apply to any claims, litigation, or other actions which may be brought by either Lessee or Lessor against each other.

(d) Nothing in this paragraph shall be construed as requiring that Lessor defend itself against all or any aspect of any challenge to this Lease or any associated environmental review. However, Lessee may take whatever legal action is available to it to defend this Lease or any associated environmental review against any challenge by a third party, whether or not Lessor chooses to raise a defense against such a challenge.

(e) Lessee shall notify Lessor immediately in case of any accident, injury, or casualty on the Lease Premises.

9. INSURANCE

(a) Lessee shall obtain and maintain in full force and effect during the term of this Lease comprehensive general liability insurance and property damage insurance, with such coverage and limits as may be reasonably requested by Lessor from time to time, but in no event for less than the sum(s) specified against any and all claims or liability arising out of the ownership, use, occupancy, condition, or maintenance of the Lease Premises and all Improvements.

(b) The insurance policy shall identify the Lease by its assigned number. The specific Improvements shall also be generally identified, as well as their location on state owned property. The coverage provided shall be primary and non-contributing. Lessee shall keep such policy current. Lessor shall be named as a "certificate holder" and/or an "additional interest" on the policy. Lessee shall provide Lessor with a current certificate of insurance at all times. At Lessor's request, Lessee shall provide a full copy of the current insurance policy, along with any and all endorsements or other such documents affecting the coverage. Lessor will not be responsible for any premiums or other assessments on the policy.

(c) The insurance coverage specified in this Lease shall be in effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee shall notify Lessor within five (5) business days if the insurance is canceled for any reason.

10. SURETY BOND

(a) When required by Section 1 of this Lease, Lessee shall provide a surety bond or other security device acceptable to Lessor, for the specified amount, and naming the State of California, California State Lands Commission as the assured, to guarantee to Lessor the faithful observance and performance by Lessee of all of the terms, covenants, and conditions of this Lease.

(b) Lessor may require an increase in the amount of the surety bond or other security device to cover any additionally authorized Improvements, any modification of consideration, or to provide for inflation or other increased need for security. The surety bond or other security device may be increased on each fifth anniversary of the beginning date of this Lease. Should Lessor fail to exercise such right effective on any fifth anniversary, it may do so effective on any one (1) of the next four (4) anniversaries following such fifth anniversary without prejudice to its right to effect such modification on the next or any succeeding fifth anniversary. No such modification shall become effective unless Lessee is given at least thirty (30) days' notice prior to the date of the Commission meeting wherein the modification of the bond or security is considered, or thirty (30) days' notice prior to the effective date of the increase, whichever provides more notice.

(c) The surety bond or other security device shall be maintained in full force and effect at all times during the Lease term and subsequently until Lessor has either accepted all of the Lease Premises as improved or restored by Lessee as provided elsewhere in this Lease. Lessee must first seek approval of Lessor before changing the type of security device used, or the bond holder.

11. ASSIGNMENT, ENCUMBRANCING OR SUBLETTING

(a) Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Lease Premises, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Lease Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

(1) Notwithstanding the foregoing prohibition against transfer and assignment, the Lease may be transferred by Lessee if the transfer is caused by the death of a spouse and the full interest of the deceased spouse is transferred to a surviving spouse; or the transfer is caused by the dissolution of the marriage of Lessee and the full interest of one of the spouses is transferred to the other spouse. In the event of such a transfer, Lessor shall be notified in writing within 30 days of the transfer.

(2) Notice to Lessor of Successor Trustee(s): In the event this Lease is held in trust, and the Lessee is a trustee thereof, the substitution or succession of a new trustee shall not be an assignment or transfer for the purposes of this Paragraph. Lessee (and by operation of law, any successor trustee) agrees to provide prompt notice to Lessor of any succession or substitution of trustee in accordance with Paragraph 16(c) of General Provisions, no later than sixty (60) days after the named trustee as appears on the face of this Lease becomes unable or ceases to serve as trustee for any reason.

(b) The following shall be deemed to be an assignment or transfer within the meaning of this Lease:

(1) If Lessee is a business entity, any dissolution, merger, consolidation or other reorganization of Lessee, or the sale or other transfer of substantially all the assets of Lessee. If Lessee is a publicly traded entity,

transfers of interests in Lessee shall not constitute an assignment requiring the consent of Lessor.

(2) If Lessee is a partnership, a transfer of any interest of a general partner, a withdrawal of any general partner from the partnership, or the dissolution of the partnership.

(c) If this Lease is for sovereign lands appurtenant to adjoining littoral or riparian land, Lessee shall not transfer or assign its ownership interest or use rights in such adjoining lands separately from the leasehold rights granted herein without the prior written consent of Lessor.

(d) If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease Premises, Lessee shall do all of the following:

(1) Give not less than 90 days' prior written notice to Lessor;

(2) Provide the name, complete business organization, operational structure, and formation documents of the proposed assignee, sublessee, secured third party, or other transferee; and the nature of the use of and interest in the Lease Premises proposed by the assignee, sublessee, secured third party or other transferee.

(3) Provide the terms and conditions of the proposed assignment, sublease, or encumbrance or other transfer;

(4) Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Lease Premises; and

(5) Provide such additional or supplemental information as Lessor may reasonably request concerning the proposed assignee, sublessee, secured party or other transferee.

(6) Lessor will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, their business experience and expertise, their personal and business reputation, their managerial and operational skills, their proposed use and projected rental, as well as other relevant factors.

(e) Lessor shall have a reasonable period of time from the receipt of all documents and other information required under this provision to grant or deny its approval of the proposed party. Lessor may reevaluate the rent, insurance and/or bond provisions of this Lease, and may condition its approval of the proposed assignment, sublease, hypothecation, mortgage, or other transfer on the party's acceptance of the new terms. Lessee's rights stated in this paragraph shall apply regardless of whether the proposed transfer coincides with a regular rent review period as stated in Section 3 Paragraph 3(c) above.

(f) Lessee's mortgage or hypothecation of this Lease, if approved by Lessor, shall be subject to terms and conditions imposed by a separately negotiated encumbrancing agreement.

(g) Upon the express written assumption of all obligations and duties under this Lease by an assignee approved by Lessor, the Lessee may be released from all liability under this Lease arising after the effective date of assignment and not associated with Lessee's use, possession or occupation of or activities on the Lease Premises; except as to any hazardous wastes, substances or materials as defined under federal, state or local law, regulation, or ordinance manufactured, generated, used, placed, disposed, stored or transported on the Lease Premises during Lessee's tenancy.

(h) If the Lessee files a petition or an order for relief is entered against Lessee, under Chapters 7, 9, 11 or 13 of the Bankruptcy Code (11 USC Sect. 101, et seq.) then the trustee or debtor-in-possession must elect to assume or reject this Lease within sixty (60) days after filing of the petition or appointment of the trustee, or the Lease shall be deemed to have been rejected, and Lessor shall be entitled to immediate possession of the Lease Premises. No assumption or assignment of this Lease shall be effective unless it is in writing and

unless the trustee or debtor-in-possession has cured all Defaults under this Lease (monetary and non-monetary) or has provided Lessor with adequate assurances (1) that within ten (10) days from the date of such assumption or assignment, all monetary Defaults under this Lease will be cured; and (2) that within thirty (30) days from the date of such assumption, all non-monetary Defaults under this Lease will be cured; and (3) that all provisions of this Lease will be satisfactorily performed in the future.

(i) In the event of any transfer or assignment, under this Paragraph 11 or by any other means authorized by this Lease, the Lease terms shall be for the remaining years existing on the Lease prior to the transfer or assignment. A transfer or assignment shall not extend the term of this Lease.

12. DEFAULT AND REMEDIES

(a) Default

The occurrence of any one or more of the following events shall immediately and without further notice constitute a Default of this Lease:

(1) Lessee's failure to make any payment of rent, royalty, or other consideration as required under this Lease; or

(2) Lessee's failure to obtain or maintain liability insurance or a surety bond or other security device as required under this Lease; or

(3) Lessee's abandonment of the Lease Premises (including the covenant for continuous use as provided for in Paragraph 5(b)) during the Lease term; or

(4) Lessee's failure to obtain and maintain all necessary governmental permits or other entitlements; or

(5) The maintenance of the Lease Premises in violation of, or failure to comply with, any applicable provisions of any Regulatory Agency, Environmental Law, or maintenance of the Lease Premises in a condition constituting nuisance; or

(6) Lessee's Failure to commence to construct and to complete construction of the Improvements authorized by this Lease within the time limits specified in this Lease.

(7) Lessee is found to sublet or otherwise surrender daily management and control of the Lease Premises to a third party without the knowledge, expressed written consent or authorization of the Lessor.

(b) Lessee's failure to observe or perform any other term, covenant, or condition of this Lease when such failure shall continue for a period of thirty (30) days after Lessor's giving written notice shall constitute a Default of this lease. However, if the nature of Lessee's Default under this paragraph is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in Default if Lessee commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion.

(c) Should Lessee Breach any term, covenant, or condition of this Lease under Paragraph 12(b) above three (3) times in any three hundred and sixty-five (365) day period, the third Breach will be a Default under this Lease and Lessor will be entitled to immediately terminate this Lease, and take other appropriate action. Lessor will provide written notice of each Breach as provided above, and provide written notice that future Breaches will constitute immediate Default with no cure period.

(d) Remedies

In the event of a Default by Lessee and Lessee's failure to cure such Default if such a cure period is applicable, Lessor may at any time and with or without notice do any one or more of the following in addition to any rights or remedies permitted by law:

(1) Re-enter the Lease Premises, remove all persons and property, and repossess and enjoy such premises; or

(2) Terminate this Lease and Lessee's right of possession of the Lease Premises by any lawful means. The termination shall not relieve Lessee of any obligation, monetary or otherwise, which has accrued prior to the date of termination. Such termination shall be effective upon Lessor's giving written notice and upon Lessee's receipt of such notice. Lessee shall immediately surrender possession of the Lease Premises to Lessor. Lessor shall be entitled to recover from Lessee all amounts to which Lessor is entitled pursuant to Section 1951.2 of the California Civil Code, or any other provision of law, including any necessary Repair, renovation, alteration, remediation, or removal of Improvements; or

(3) Maintain this Lease in full force and effect and recover any rent, royalty, or other consideration as it becomes due without terminating Lessee's right of possession regardless of whether Lessee shall have abandoned the Lease Premises, subject to the conditions imposed by Cal. Civil Code § 1951.2; or

(4) Exercise any other right or remedy which Lessor may have at law or equity.

(e) Determination of Rental Value

If rent under this Lease is calculated as a percentage of Lessee's income attributable to the Lease Premises and Lessee abandons the Lease Premises during some or all of the applicable period, then the reasonable rental value shall be the percentage of proceeds Lessor would have received had Lessee operated the Lease Premises in the usual and customary manner.

(f) Waiver of Rights

The failure or delay of either party to exercise any right or remedy shall not be construed as a waiver of such right or remedy or any Breach by the other party. Lessor's acceptance of any rent shall not be considered a waiver of any preexisting Breach by Lessee other than the failure to pay the particular rent accepted regardless of Lessor's knowledge of the preexisting Breach at the time rent is accepted.

13. RESTORATION OF LEASE PREMISES AND ENVIRONMENTAL MATTERS

(a) Restoration of Lease Premises

(1) Upon expiration or sooner termination of this Lease, Lessee must immediately surrender possession of the Lease Premises to Lessor. Prior to the time of surrender, Lessee must remove all or any Improvements together with the debris and all parts of any such Improvements at its sole expense and risk, regardless of whether Lessee actually constructed or placed the Improvements on the Lease Premises; or Lessor, at its sole and absolute discretion, may itself remove or have removed all or any portion of such Improvements at Lessee's sole expense. Lessor may waive all or any part of this obligation in its sole discretion if doing so is in the best interests of the State.

(2) As a separate and related obligation, Lessee shall restore the Lease Premises as nearly as possible to the conditions existing prior to the installation or construction of any Improvements. For purposes of this Lease, restoration includes removal of any landscaping; removal of any Hazardous Materials; and to the extent possible, undoing any grading, fill, excavation, or similar alterations of the natural features of the Lease Premises. Lessor may waive all or any part of this obligation in its sole and absolute discretion.

(3) Unless otherwise provided for in this Lease, Lessee shall submit to Lessor no later than one (1) year prior to the expiration of this Lease either: (a) an application and minimum expense deposit for a new lease for the continued use of the Lease Premises, or (b) a plan for the restoration of the Lease Premises to be completed prior to the expiration of the lease term together with a timeline for obtaining all necessary permits and conducting the work prior to the expiration of this Lease.

(4) In removing any or all Improvements, or conducting any restoration work, Lessee shall be required to obtain any permits or other governmental approvals as may then be required by any Regulatory Agency, including, without limitation, any Environmental Law.

(5) Lessor may, upon written notice, in its sole and absolute discretion, accept title to any or all Improvements at the termination of this Lease. Lessor shall notify Lessee that Lessor intends to take title to any or all Improvements within six (6) months of Lessee submitting a plan for restoration under

Paragraph 13(a)(3)(b) above. If Lessor elects to take title to any such Improvements, Lessee shall deliver to Lessor such documentation as may be necessary to convey title to such Improvements to Lessor free and clear of any liens, mortgages, loans, or any other encumbrances. Lessor shall not pay, and Lessee shall not be entitled to compensation for Lessor's taking title to such property.

(b) **Environmental Matters**

(1) Lessee's Obligations:

(i) Lessee will not use, occupy, or permit any portion of the Lease Premises to be used or occupied in violation of any Environmental Law. Lessee shall not manufacture or generate or store Hazardous Material on the Lease Premises unless specifically authorized under other terms of this Lease.

(ii) Lessee shall practice conservation of water, energy, and other natural resources.

(iii) Lessee shall notify Lessor and the appropriate governmental emergency response agency, or agencies immediately in the event of any release or threatened release of any Hazardous Material.

(2) Lessor may at any time during the Lease term require Lessee to conduct at its own expense and by a contractor approved by Lessor an independent environmental site assessment or inspection for the presence or suspected presence of Hazardous Material generated, used, placed, disposed, stored, or transported on the Lease Premises during the term of the Lease. Lessee shall provide the results of the assessment or inspection to Lessor and the appropriate governmental response agency or agencies and shall further be responsible for removing or taking other appropriate remedial action regarding such Hazardous Material in accordance with applicable Environmental Law.

(3) **Environmental Indemnity**

Lessee shall indemnify, defend, and hold Lessor and Lessor's, officer, appointees, volunteers, employees, agents, successors and assigns free and harmless from and against all Damages that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection with or arising from any Breach of Lessee's obligations hereunder; or out of any violation by Lessee of any Environmental Law; or resulting in the imposition of any lien or claim for the recovery of any costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on the Lease Premises during the Lessee's tenancy. This obligation shall include any prior leases between Lessor and Lessee and will continue through any periods Lessee is in holdover, unlawful detainer, or any subsequent month-to-month tenancies created by operation of law. Lessee's obligations hereunder will survive the expiration or sooner termination of this Lease.

(4) Violation of this section shall constitute grounds for termination of the Lease. Lessor, shall notify Lessee when, in Lessor's opinion, Lessee has violated the provisions of this section. Lessee shall immediately discontinue the conduct and respond within five (5) business days. Lessee shall take all measures necessary to remedy the condition.

14. QUITCLAIM

Lessee shall, upon the early termination of this Lease and at Lessor's request, execute and deliver to Lessor in a form provided by Lessor a good and sufficient release of all rights under this Lease. Should Lessee fail or refuse to deliver such a release, Lessor may record a written notice reciting such failure or refusal. This written notice shall, from the date of its recordation, be conclusive evidence against Lessee of the termination of this Lease and all other claimants.

15. HOLDING-OVER

(a) This Lease shall terminate without further notice upon the expiration of the term of this Lease. Lessee shall have removed any Improvements and completed any restoration as required by Lessor prior to the expiration of this Lease, and shall surrender possession of the Lease Premises. Any failure by the Lessee to remove Improvements, restore the Lease Premises, and/or surrender possession of the Lease Premises at the expiration or sooner termination of this Lease shall not constitute a renewal or extension and shall not give Lessee any rights in or to the Lease Premises or any part thereof except as expressly provided in this Lease. Lessee shall be deemed in unlawful detainer of the Lease Premises and Lessor shall be entitled to all resulting legal remedies.

(b) Lessor may, in its sole discretion, choose to accept Rent for the Lease Premises instead of immediately taking legal action to recover possession of the Lease Premises. Any tenancy created by operation of law on Lessor's acceptance of rent shall be deemed a month-to-month tenancy regardless of what sum or sums Lessee delivers to Lessor. Except as set forth below, any subsequent tenancy created in this manner shall be on the same terms, covenants, and conditions set forth in this Lease insofar as such terms, covenants, and conditions can be applicable to a month-to-month tenancy

(c) In recognition of the increased accounting, land management, and supervisory staff time required for month-to-month tenancies, the rent for each month or any portion thereof during such holdover period may be an amount equal to one hundred fifty percent (150%) of one-twelfth (1/12) of the total compensation for the most recent year paid. In the event this Lease does not require monetary compensation, Lessor shall have the right to establish rent based on the fair market value of the Lease Premises. The month-to-month tenancy may be terminated by Lessee or Lessor upon thirty (30) calendar days' prior written notice to the other.

16. ADDITIONAL PROVISIONS

(a) Waiver

(1) No term, covenant, or condition of this Lease and no omission, neglect, Default or Breach of any such term, covenant or condition shall be deemed to have been waived by Lessor's acceptance of a late or nonconforming performance or otherwise, unless such a waiver is expressly acknowledged by Lessor in writing. No delay or omission of Lessor to exercise any right or power arising from any omission, neglect, Default or Breach of term, covenant, or condition of this Lease shall be construed as a waiver or any acquiescence therein.

(2) Any such waiver shall not be deemed to be a waiver of any other term, covenant or condition; of any successive Breaches of the same term, covenant, or condition; or of any other Default or Breach of any term, covenant or condition of this Lease.

(b) Time

Time is of the essence for this Lease and each and all of its terms, covenants or conditions in which performance is a factor.

(c) Notice

All notices required to be given under this Lease shall be given in writing, sent by U.S. Mail with postage prepaid, to Lessor at the offices of the State Lands Commission and the Lessee at the address specified in this Lease. Lessee shall give Lessor notice of any change in its name or address.

(d) Consent

Where Lessor's consent is required under this Lease its consent for one transaction or event shall not be deemed to be a consent to any subsequent occurrence of the same or any other transaction or event.

(e) Changes

This Lease may be terminated and its term, covenants, and conditions amended, revised, or supplemented only by mutual written agreement of the parties.

(f) Successors

The terms, covenants, and conditions of this Lease shall extend to and be binding upon and inure to the benefit of the heirs, successors, and assigns of the respective parties.

(g) Joint and Several Obligation

If more than one Lessee is a party to this Lease, the obligations of the Lessees shall be joint and several.

(h) Captions

The section and paragraph captions used in this Lease are for the convenience of the parties. The captions are not controlling and shall have no effect upon the construction or interpretation of this Lease.

(i) Severability

If any term, covenant or condition of this Lease is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

(j) Representations

Lessee agrees that no representations have been made by Lessor or by any person or agent acting for Lessor. Lessor and Lessee agree and acknowledge that this document contains the entire agreement of the parties, that there are no verbal agreements, representations, warranties or other understandings affecting this Lease, and Lessor and Lessee, as a material part of the consideration of this Lease, waive all claims against the other for rescission, damages, or otherwise by reason of any alleged covenant, agreement or understanding not contained in this Lease.

(k) Gender and Plurality

In this Lease, the masculine gender includes both the feminine and neuter, and the singular number includes the plural whenever the context so requires.

(l) Survival of Certain Covenants

All covenants pertaining to bond, insurance, indemnification, restoration obligations, Breach, Default, and remedies shall survive the expiration or earlier termination of this Lease until Lessee has fulfilled all obligations to restore the Lease Premises as required by this Lease.

(m) Counterparts

This agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement.

(n) Delegation of Authority

Lessor and Lessee acknowledge Lessor as defined herein includes the Commission Members, their alternates or designees, and the staff of the Commission. The ability of staff of the Commission to give consent, or take other discretionary actions described herein will be as described in the then-current delegation of authority to Commission staff. All other powers are reserved to the Commission.

[Remainder of Page Intentionally Left Blank]

STATE OF CALIFORNIA - STATE LANDS COMMISSION

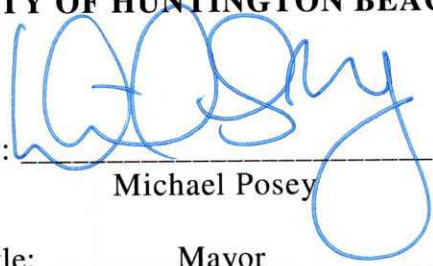
LEASE NO. PRC 6616.1

This Lease shall become effective only when approved by and executed on behalf of the State Lands Commission of the State of California and a duly executed copy has been delivered to Lessee. The submission of this Lease by Lessor, its agent, or representative for examination by Lessee does not constitute an option or offer to lease the Lease Premises upon the terms and conditions contained herein, or a reservation of the Lease Premises in favor of Lessee. Lessee's submission of an executed copy of this Lease to Lessor shall constitute an offer to Lessor to lease the Lease Premises on the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date hereafter affixed.

LESSEE:

CITY OF HUNTINGTON BEACH

By: 

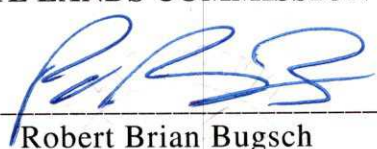
Michael Posey

Title: Mayor

Date: July 17, 2018

LESSOR:

**STATE OF CALIFORNIA
STATE LANDS COMMISSION**

By: 

Robert Brian Bugsch

Title: Chief, Land Management Division

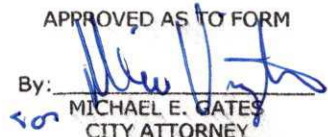
Date: AUG 30 2018

ATTACH ACKNOWLEDGMENT

Execution of this document was authorized by
the California State Lands Commission on

June 21, 2018
(Month Day Year)

APPROVED AS TO FORM

By: 

MICHAEL E. GATES
CITY ATTORNEY

CITY OF HUNTINGTON BEACH

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ACKNOWLEDGMENT

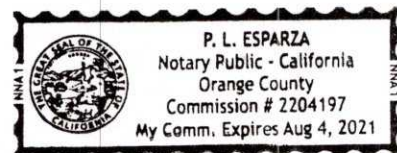
STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On 7/17/2018 before me, **P. L. Esparza**, *Notary Public*, personally appeared **Mike Posey** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.


(Notary Signature)



(Seal)

EXHIBIT A
Land Description

EXHIBIT A

PRC 6616.1

LAND DESCRIPTION

A strip of tide and submerged land 160 feet wide being 80 feet on each side of the following described centerline situate within the City of Huntington Beach, Orange County, State of California, the centerline of said strip being described as follows:

BEGINNING at the intersection of northeasterly line of Ocean Avenue with the centerline of Main Street, thence S 41° 41' 37" W 2065.92 feet to the end of said centerline of said strip of tide and submerged land.

EXCEPTING THEREFROM all that portion lying landward of the ordinary high water mark of the Pacific Ocean.

Accompanying plat is hereby made part of this description.

END OF DESCRIPTION

Prepared 06/14/2018 by the California State Lands Commission Boundary Unit.



NO SCALE

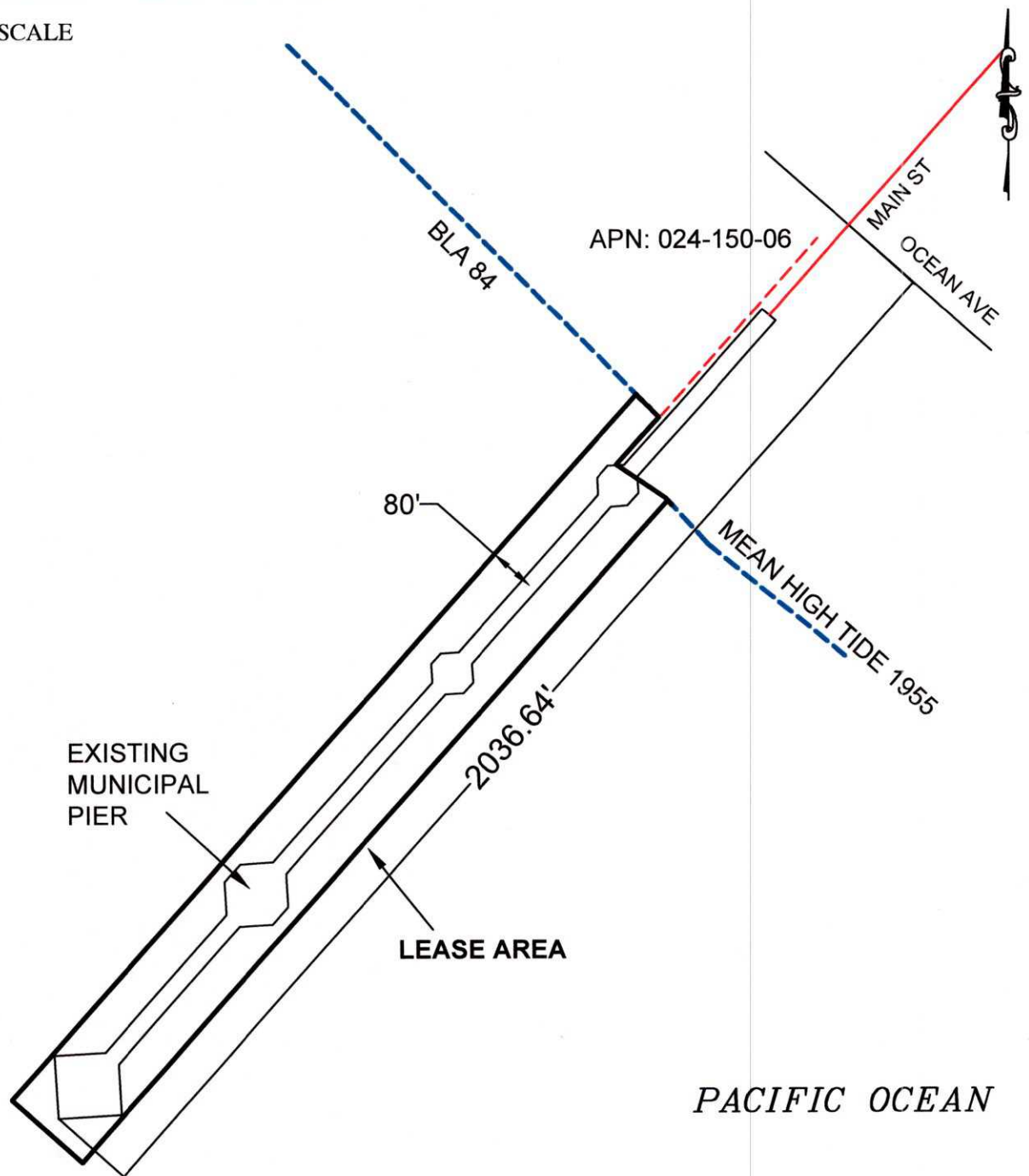


EXHIBIT A

Page 2 of 2

RPF 06/14/2018

LAND DESCRIPTION PLAT
PRC 6616.1, CITY OF
HUNTINGTON BEACH
ORANGE COUNTY

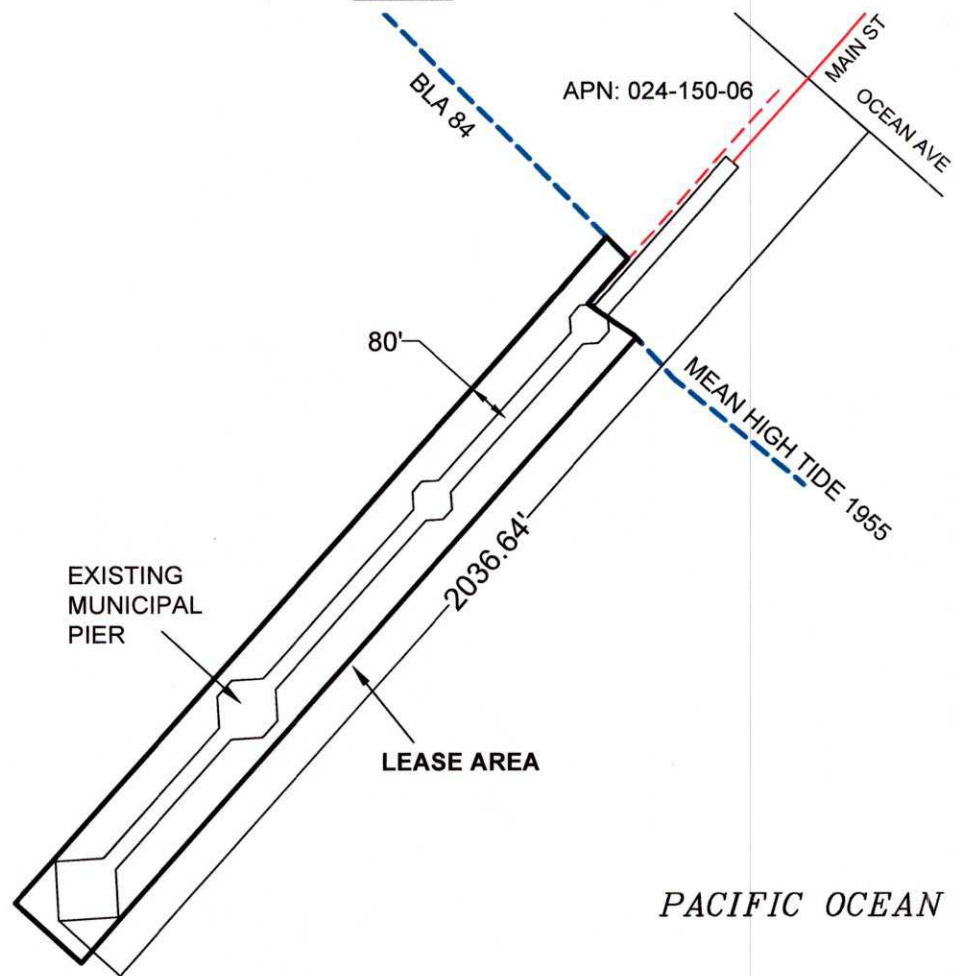
CALIFORNIA STATE
LANDS COMMISSION



EXHIBIT B
Site and Location Map

NO SCALE

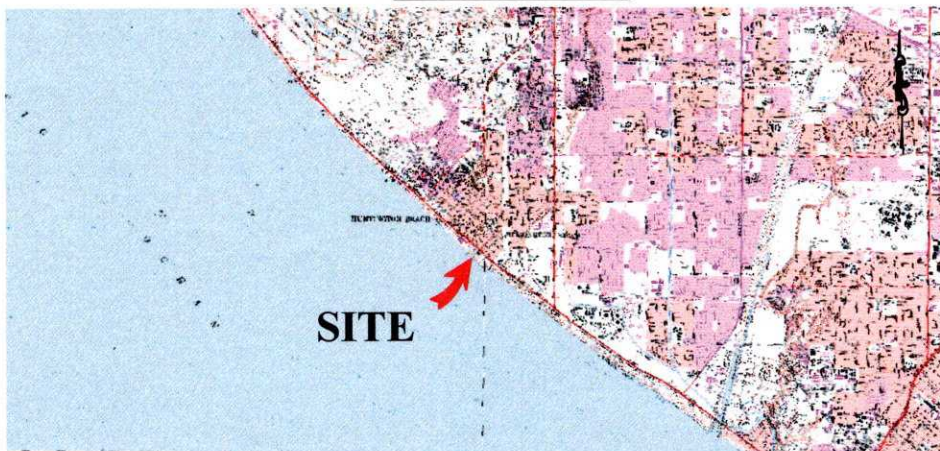
SITE



MUNICIPAL PIER, HUNTINGTON BEACH

NO SCALE

LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

Exhibit B

PRC 6616.1
CITY OF HUNTINGTON BEACH
APN 024-150-06
GENERAL LEASE -
PUBLIC AGENCY USE
ORANGE COUNTY



RPF 06/14/2018

EXHIBITS C1 through C6
Endorsement of Subleases

EXHIBIT C-1

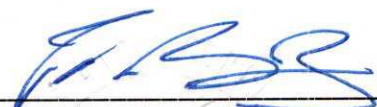
PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Abercrombie & Fitch Company, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-2

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Ruby's Diner Inc., under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-3

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Let's Go Fishing, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-4

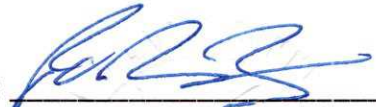
PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No.C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Fair Share Enterprises, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-5

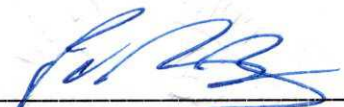
PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Surf City Store, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT C-6

PRC 6616.1

SUBLEASE

ENDORSEMENT

STATE OF CALIFORNIA STATE LANDS COMMISSION

Pursuant to Commission Minute Item No. C57 dated, June 21, 2018, the herein sublease between, City of Huntington Beach and Kite Connection, under a portion of State Lease PRC No. 6616.1, is hereby approved.

BY: 

BRIAN BUGSCH, Chief
Land Management Division

EXHIBIT D

Lease Maintenance

Reimbursement Agreement

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD.213 (new 06/03)

AGREEMENT NUMBER
R02718
REGISTRATION NUMBER

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

California State Lands Commission (State)

CONTRACTOR'S NAME

City of Huntington Beach

2. The term of this

Agreement is: June 21, 2018 thru June 20, 2043

3. The maximum amount of

this Agreement is: \$ 22,500

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement:

Exhibit A – Scope of Work 2 Page(s)

Exhibit B – Budget Detail and Payment Provision/Definitions and Terms 2 Page(s)

Exhibit C* – General Terms and Conditions GTC 4/2017

Check mark one item below as Exhibit D: 2 Page(s)

☒ Exhibit D – Special Terms and Conditions (attached hereto as part of this Agreement)

☐ Exhibit D* – Special Terms and Conditions

Items shown with an Asterisk (*) are hereby incorporated by reference and made part of this Agreement as if attached hereto. These documents can be viewed at <http://www.dgs.ca.gov/ols/Resources/StandardContractLanguage.aspx>.

IN WITNESS WHEREOF, this Agreement has been executed by parties hereto.

CONTRACTOR

CALIFORNIA
Department of General Services
Use only

CONTRACTOR'S NAME (if other than individual, state whether a corporation, partnership, etc.)

City of Huntington Beach

BY (Authorized Signature)

DATE SIGNED

July 17, 2018

PRINTED NAME AND TITLE OF PERSON SIGNING

Michael Posey, Mayor

ADDRESS

2000 Main Street, Huntington Beach, CA 92648

STATE OF CALIFORNIA

AGENCY NAME

California State Lands Commission

BY (Authorized Signature)

DATE SIGNED

8/10/18

PRINTED NAME AND TITLE OF PERSON SIGNING

Denise Cook, Fiscal Officer

ADDRESS

100 Howe Avenue, Suite 100-South, Sacramento, California 95825

☒ Exempt per

GC 14616

EXHIBIT A

SCOPE OF WORK

1. Work to be Performed – The City of Huntington Beach, the “Lessee”, enters into this Agreement with the California State Lands Commission, the “Commission” or “State” (hereafter the Lessee and the Commission/State are referred to collectively as the “Parties”) for staff costs associated with the processing and review of periodic reports of the facilities associated with Lessee’s General Lease – Public Agency Use, Lease No. PRC 6616.1 (Lease). The State hereby agrees to perform the following services:
 - A. Lease Management: The State shall review the Lessee’s annual summary reports. Reviewing costs shall include, but not be limited to, actual costs for staff time for review of sea-level rise and flooding vulnerability and risk assessments, updates or amendments to the Local Coastal Program, annual flooding frequency and extent, annual site photographs, schedule and nature of repair and maintenance operations, and coastal hazard remediation and removal. In addition to Lessee’s annual report submissions, Lessee shall conduct a structural assessment on or before December 31, 2020 and then every five years following the initial inspection, with a report to be provided within 30 days of inspection for Commission engineering staff review. Staff costs shall include but not be limited to, actual costs of staff time for review of submitted annual summary reports and engineering review of structural inspection reports for the term of the lease pursuant to Section 2, Special Provisions, Paragraph 6, of Lease No. PRC 6616.1.
 - B. Mutual Understanding: This Agreement is entered into by the parties hereto with the express understanding that the State cannot assure: 1) final approval of the permit or lease; 2) that permits from other State or local permitting agencies are obtainable; and 3) that either the State or the Lessee by entering into this Agreement is representing that the lease will go forward as proposed. Lessee understands and expressly acknowledges that the State’s review of annual summary and inspection reports is for the sole purpose of evaluating Lessee’s compliance with a lease from the Commission, if any, and not for any other purpose.
2. Parties’ Agents
 - A. For Engineering Review the State’s Project Officer shall be:
Chandrashekar Basavalinganadoddi, Supervising Mineral Resource Engineer
California State Lands Commission
Mineral Resource Management
200 Oceangate, 12th floor
Long Beach, CA 90802
Tel. (562) 590-5209
Email: Chandrashekar.Basavalinganadoddi@slc.ca.gov

B. For Lease Management the State's Project Officer shall be:
Lucien Pino, Public Land Management Specialist
California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825
Tel. (916) 574- 1858
E-mail: lucien.pino@slc.ca.gov

C. The Applicant's Project Manager shall be:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

D. The Applicant's Agent is:
Travis K. Hopkins, Director of Public Works
City of Huntington Beach Public Works Department
2000 Main Street
Huntington Beach, CA 92648
Tel. (714) 374-5348
E-mail: thopkins@surfcity-hb.org

3. Notices and Authorities

A. Any notice or other written communications required or permitted under this Agreement may be personally delivered in writing to the State's Project Officer or Applicant's Project Manager, or may be sent by certified mail, return receipt requested, to the address stated above and shall, based on such delivery or sending, be deemed to have been effectively communicated. Either party may change such address by written notice to the other party.

Any notice given other than as provided above, shall not be deemed to be effectively communicated until received in writing.

B. The Project Manager shall have full authority to act on behalf of the Lessee for administration of the Project. All communications given to the Project Manager shall be as binding, as if given to the Lessee.

C. The State may change its Project Officer, at any time, by written notice to the Lessee. The Lessee may change its Project Manager, at any time, by written notice to the State's Project Officer.

EXHIBIT B

BUDGET AND PAYMENT PROVISIONS

1. **Invoicing and Payment** – Lessee agrees to reimburse the State for all reasonable costs associated with the review and processing of annual summary report and quinquennial inspection report submissions according to this Standard Agreement whether prior or subsequent to the execution of this Agreement. Processing costs shall include, but not be limited to, staff time associated with those tasks outlined in Exhibit A, Scope of Work. Staff costs shall be computed in accordance with Section 8752 of the State Administrative Manual and shall include salaries and wages, related staff benefits and administrative overhead.

The invoice shall be mailed to the Lessee's Project Manager. Payments shall reference the Agreement number assigned to this Agreement and must be mailed to the following address:

California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attention Accounting

2. **Estimated Reimbursable Costs** – The initial estimated costs are based on the information and contracts existent as of the date of this Agreement. The itemized reimbursable costs estimate, to include recurring annual costs, for Work to be Performed is:

A. Lease Management Estimate:

To include the following:

1. Processing and Review of Annual Summary Report: \$500
2. Processing and Engineering Review of Periodic Structural Inspection Reports (once every five years): \$2,000¹ (\$400 per year)

Approximate Recurring Annual Cost Estimate for Lease Management Review: \$900²

3. **Expense Deposits and Billings:**

- A. Lease Management:** Staff costs incurred by the State for Lease Management pursuant to this Agreement, as specified in Exhibit B, paragraph 2(c), shall be billed in arrears on a monthly basis. All payments are due 30 days from the date of the invoice. The State reserves the right to demand an expense deposit equal to the remainder of the Agreement should the Lessee fail to pay invoices within the time specified. Total costs invoiced, including expense deposits, shall not exceed the dollar amount specified in this Agreement unless amended.

¹ Estimate is based on usual and customary review; should extraordinary circumstances or major repair work occur, staff time needed for engineering review may exceed this estimate. In such an event, Lessee will compensate the State for staff time that exceeds the estimated amount, in accordance with the terms of this agreement.

² The \$900 Recurring Annual Cost Estimate includes the \$500 annual amount, and the recurring periodic amount divided equally at \$400 per year over each five-year period.

4. Additional Costs or Services – Lessee will be advised of any estimated cost increase in writing in accordance with this Agreement should the need for additional services become known or as costs previously estimated exceed the above estimate.

Upon notification of the need for additional funds, the Lessee shall have the option to dispute or accept the increase with all the terms and conditions of this Agreement being unchanged and in effect. The Lessee shall notify the State within five (5) days of notice of any intent to dispute the change. Non-response shall be acknowledged as acceptance of the additional charges and Lessee will be billed for the balance in accordance with the terms above.

5. Definitions and Terms - Wherever the following abbreviations and terms (or pronouns in place of them) are used, the intent and meaning shall be interpreted as provided in this section. Working titles having a masculine gender, and pronouns referring to such said titles, are utilized in this Agreement for the sake of brevity and are not intended to refer to either sex or the neuter. All references to the singular shall refer also to the plural. All references to the plural shall refer also to the singular.
- A. As used within this Agreement, the terms “Lessee” and “Contractor” are used interchangeably and are to be considered the same entity.
 - B. As used within this Agreement, the terms “State” and “Commission” are used interchangeably and are to be considered the same entity.
 - C. The term “Agreement” refers to this document as executed by the Lessee and the State. This document includes Standard Form and any attached Exhibits.
 - D. The term “Project Manager” refers to that person appointed or designated by the Applicant to administer the lease for the Applicant.
 - E. The term “Project Officer” refers to that person appointed by the State to manage the lease file associated with this agreement.
 - F. The term “Lessee’s Agent” refers to that person designated by the Lessee to provide technical assistance and support to the State in coordinating transmittal of reports and other technical information and shall have no authority to act for the Lessee unless otherwise stated in writing by Lessee to the State’s Project Officer.

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GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.
8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or

duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

10. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, §11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article. Contractor shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours' notice, to such of its books, records, accounts, and all other sources of information and its facilities as said Department or Agency shall require in ascertaining compliance with this clause. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement. (See Cal. Code Regs., tit. 2, §11105.)

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 04/2017 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

- 1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.
- 2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tender's final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

[Remainder of Page Intentionally Left Blank]

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Type of Agreement – This Agreement between the State and the Lessee is for the reimbursement of costs, from the Lessee to the State, for lease maintenance related activities, detailed in Exhibits A and B of this Agreement, performed by staff of the California State Lands Commission. This Agreement does not involve the procurement of goods or services from the Lessee.
2. Effective Reimbursement Period – Notwithstanding the date of Agreement approval in paragraph 1 of GTC 4/2017, the Lessee agrees to reimburse the State for lease maintenance-related review costs detailed in Exhibits A and B of this Agreement, that accrue beginning on the date listed in form STD.213, paragraph 2 of this Agreement until the termination of this Agreement. The term of this agreement shall extend to include any holdover period of Lease No. PRC 6616.1.
3. This paragraph supersedes paragraph 5 of, Exhibit C, “Indemnification”:

Indemnification – To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the State of California and any and all agencies or departments thereof, including but not limited to, any and all boards, commissions, officers, agents, employees, and representatives (Indemnitees), against any and all claims, liabilities, charges, losses, expenses, and costs, including the State’s attorneys’ fees (Liabilities), that may arise from or by reason of any action or inaction by the Indemnitees in connection with the work described in Exhibit A. This obligation of the Lessee to indemnify, defend, and hold harmless the Indemnitees shall not apply to any Liabilities caused solely by the gross negligence or intentional acts of the State or its officers, agents, and employees; or to any claims, litigation, or to other actions brought by the Lessee against the Indemnitees in relation to the Lessee’s application or this Agreement. This provision shall survive termination of this Agreement.

4. This paragraph supersedes paragraph 6 of GTC 610, Exhibit C, “Disputes”:

Disputes – Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under or relating to the performance of this Agreement which is not disposed of by Agreement shall be decided by the Project Officer, who shall reduce his decision to writing in regard to the dispute and shall transmit a copy thereof to the Lessee within thirty (30) days. The decision of the Project Officer shall be final and conclusive, unless within thirty (30) days from the date of receipt of such copy, the Lessee transmits to the State a written appeal. Said appeal shall be supported with specificity.

- a. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard before the State Lands Commission within sixty (90) days of the receipt by the State of the Lessee’s written appeal and to offer evidence in support of its appeal. Pending the final decision of any such dispute, the Lessee shall proceed diligently with the performance of the Agreement and in accordance with the written decision of the Project Officer which is the subject of the Lessee’s appeal including the payment of invoices to the State.
- b. The procedure described herein shall not prejudice or deny the Lessee’s remedies at law. However, the Lessee agrees to exhaust the procedure described herein before pursuing remedies at law. All amounts paid to the State under protest shall be held by the State in trust until the dispute is resolved.

5. Modification – This paragraph supersedes paragraph 7 of GTC 610, Exhibit C, “Termination for Cause”:

Either party may elect to modify the scope of work or costs associated with the lease maintenance described in Exhibit A, Paragraph 1(A) and Exhibit B, Paragraphs 2(A) of this Agreement by written notice at any time prior to or during the lease term upon ten (10) days written notice to the other party. The Lessee agrees that in the event of such modification of this Agreement by either party as provided above, it shall reimburse the State one hundred percent (100%) of all costs incurred by the State in the performance of its obligations as described in this Agreement.

6. Reimbursement of Costs – Lessee shall reimburse the State in full for all reasonable costs and attorney’s fees, including, but not limited to, those charged it by the California Office of the Attorney General, that the State incurs in connection with the defense of any action brought against the State challenging this Agreement or any other matter related to this Agreement or the work performed by the State under this Agreement. In addition, Lessee shall reimburse the State for any court costs and reasonable attorney fees that the State may be required by a court to pay as a result of such action. Lessee may participate in the defense of the action, but its participation shall not relieve it of its obligations under this Paragraph. The provision of this Paragraph shall not apply to any claims, litigation or other actions which may be brought by the Parties against each other and shall not apply to the extent that any such obligation is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement. Nothing in this Paragraph shall be construed to require the State to defend itself against all or any aspect of the challenge to this Agreement or work performed under this Agreement. However, Lessee may take whatever legal action is available to it to defend this Agreement or any work performed under this Agreement against any challenge by a third party, whether or not the State chooses to raise a defense against such a challenge.
7. Records – Upon five (5) business days’ notice, the State’s records relating to its costs shall be available for the Lessee’s audit in the State’s office in Sacramento. Said audit shall take place only during regular business hours of the State. Payment of costs by the Lessee shall not constitute a waiver of its rights to audit nor an acknowledgment by the Lessee of the validity of the costs that have been paid. Nothing herein shall be deemed to require the State, its consultants, other contractors and subcontractors to maintain books, records, or documents other than those usually maintained by them, provided that such books, records and documents reasonably segregate and identify the costs for which reimbursement is required hereunder. As used herein, “State’s records” include any audit of the consultant by the State or its designated representative as authorized in this Agreement.
8. Paragraphs 4, 7, 8, 9, 10, 11, 13, 15, 16, 18, 19, and 20 of GTC 4/2017, Exhibit C, do not apply to this Reimbursement/Revenue Agreement, and are hereby waived and shall have no force or effect upon this Agreement.

[Remainder of Page Intentionally Left Blank]